

TWELFTH DAY

(Wednesday, June 26, 1968)

The Senate met at 10:00 o'clock a.m. pursuant to adjournment, and was called to order by the President.

The roll was called and the following Senators were present:

Aikin	Herring
Bates	Hightower
Bernal	Jordan
Berry	Kennard
Blanchard	Mauzy
Brooks	Moore
Christie	Patman
Cole	Ratliff
Connally	Reagan
Creighton	Schwartz
Grover	Strong
Hall	Wade
Hardeman	Watson
Harrington	Wilson
Harris	Word
Hazlewood	

A quorum was announced present.

Reverend W. H. Townsend, Chaplain, offered the invocation.

On motion of Senator Aikin, and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

Message From the House

Hall of the House of Representatives
Austin, Texas,
June 26, 1968.

Hon. Preston Smith, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following:

S. C. R. No. 16, Congratulating Mr. Sam D. Young of El Paso, Texas.

H. B. No. 23, A bill to be entitled "An Act relating to the hours of sale, service, possession, and consumption of alcoholic beverages; amending Sections 4(c)(1) and 15(e)7, Article I, and Section 10, Article II, Texas Liquor Control Act, as amended (Articles 666-4, 666-15e, and 667-10, Vernon's Texas Penal Code); providing for severability; and declaring an emergency.

H. B. No. 11, A bill to be entitled

"An Act authorizing and regulating the use of chemical tests on motor vehicle drivers to determine intoxication; providing for suspension or denial of the driver's license upon refusal of an arrested person to submit to chemical testing; providing for an administrative hearing and judicial review; providing for the interpretation of chemical tests; providing for admissibility of test results as evidence; and declaring an emergency."

H. C. R. No. 21, In memory of Ray Lowry.

H. C. R. No. 22, Commending Crawford, Texas.

Respectfully submitted,

DOROTHY HALLMAN,
Chief Clerk, House of Representatives

Report of Standing Committee

Senator Herring submitted the following report:

Austin, Texas,
June 26, 1968.

Hon. Preston Smith, President of the Senate.

Sir: We, your Committee on Jurisprudence, to which was referred H. B. No. 16, have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do not pass, but that the Committee Substitute adopted in lieu thereof do pass and be printed.

HERRING, Chairman.

C. S. H. B. No. 16 was read the first time.

Senate Bills on First Reading

The following bills were introduced, read first time and referred to the Committee indicated:

By Senators Brooks, Jordan, Grover, Schwartz and Cole:

S. B. No. 9, A bill to be entitled "An Act creating four additional District Courts of Harris County, prescribing the jurisdiction thereof; providing for the organization of the Courts; providing for the transfer and docketing of cases; providing for trial and disposition of cases in the District Courts named in this Act during the absence of the Judge thereof; prescribing the qualifications,

jurisdiction, duties and powers of the Judges thereof; providing for the appointment, election and compensation for the Judges; providing for seals of each of the Courts; providing for the Sheriff, District Attorney and Clerk of the Courts; providing for appointment and compensation of an assistant District Attorney and of special deputy Clerks; providing for the appointment of an official court reporter; fixing the time for holding the terms of the Courts and providing for jury service and empaneling of grand juries; limiting and conforming the jurisdiction thereof to the jurisdiction of the 174th, 176th, 177th, 178th, 179th, and 180th District Courts; providing for severability; repealing all laws and parts of laws in conflict with the provisions of this Act to the extent of any conflict; and declaring an emergency."

To the Committee on Legislative, Congressional and Judicial Districts.

By Senator Harrington:

S. B. No. 10, A bill to be entitled "An Act amending Acts 1961, 57th Legislature of the State of Texas Regular Session Chapter 349 by providing for power to purchase and sell necessary land, buildings, supplies, and equipment and methods of purchase; providing methods of disbursing funds; and declaring an emergency."

To the Committee on Counties, Cities and Towns.

Resolutions Signed

The President signed in the presence of the Senate after the captions had been read, the following enrolled resolutions:

S. C. R. No. 14, Commending the Fort Worth Board of Education for receiving an award of highest distinction from the National Education Association.

S. C. R. No. 16, Extending congratulations to Sam D. Young of El Paso on his recognition by Republic of Mexico and presentation of Aztec Eagle.

H. C. R. No. 4, Granting permission to Crestridge Oil Company and/or Blake Hamman of Tarrant County, Texas, to sue the State of Texas, the Texas Highway Department, and the Texas Highway Commission.

H. C. R. No. 16, Congratulating Lee Trevino on winning the 1968 U. S. Open Golf Championship.

House Bill 2 on Second Reading

The President laid before the Senate on its second reading and passage to third reading:

H. B. No. 2, A bill to be entitled "An Act raising revenue for the operation of state government; amending Chapter 20, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, to increase the limited sales, excise and use tax; making the necessary conforming amendments to the Local Sales, Excise and Use Tax Act (Article 1066c, Vernon's Texas Civil Statutes); providing certain exemptions; amending Chapter 6, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, to increase the sales and use tax on motor vehicles and to amend the definition of retail sale; including trading stamps within the definition of personal property that is subject to escheat; providing an effective date; and declaring an emergency."

The bill was read second time.

Senator Hardeman offered the following Committee Amendment to the bill:

Amend H. B. No. 2, Sec. 10 by changing the words and figures "January 1, 1969" to "October 1, 1968."

The Committee Amendment was read and was adopted.

Senator Schwartz offered the following Committee Amendment to the bill:

Amend House Bill No. 2, by adding the following Sections following the enacting clause and renumbering the following Sections:

Section 1. Article 3.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"Art. 3.01. Calculation of Tax

"(1) There is hereby levied an occupation tax on the business or occupation of producing gas within this State, computed as follows:

"A tax shall be paid by each producer on the amount of gas produced and saved within this State equivalent

to eight per cent (8%) of the market value thereof as and when produced.

"Provided, however, that the amount of the tax on sweet and sour gas shall never be less than 121/1500 of one cent (1¢) per one thousand (1,000) cubic feet.

"(2) In calculating the tax herein levied, there shall be excluded: (a) gas injected into the earth in this State, unless sold for such purpose; (b) gas produced from oil wells with oil and lawfully vented or flared; (c) gas used for lifting oil, unless sold for such purposes; and (d) gas used for fuel in field operations in connection with exploring, developing or producing oil or gas where such gas is produced and used in the field, or on the lease, where produced by the same operator as defined in Article 3.04(15). For purposes of this Article 3.01(2)(d), gas used for field operations shall include, but not be limited to, gas used for drilling, heating, separating, dehydrating, pumping, compressing, and generating incident to exploring, developing or producing oil or gas."

Sec. 2. Article 3.04, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, is amended by adding a new Section (15) to read as follows:

"(15) The term 'operator' referred to in Article 3.01(2)(d) means the person actually engaged in exploring for, developing or producing oil or gas either on his own land, on land held by him under lease, or on land in which ownership is divided, for which he is designated operator under a joint operating agreement."

**SCHWARTZ
JORDAN**

The Committee Amendment was read.

Senator Strong offered the following amendment to the pending Committee Amendment:

Amend Committee Amendment No. 2 to House Bill No. 2 by changing the word and figure eight (8) where found therein to seven (7) and including under Article 3.01 the following Section (1a), which shall immediately follow Section 1 therein:

"(1a) There is hereby imposed a tax upon the first purchaser of gas

at the rate of one per cent (1%) of the market value, as and when produced, of all gas produced, saved and sold.

"The term 'market value' shall mean the market value as defined in Article 3.02 of this Chapter.

"The tax hereby imposed shall be the liability of the first purchaser of gas.

"Every producer shall be liable to collect, report, and remit to the state this tax in the same manner and with the same responsibilities and liabilities as are imposed herein upon the producer for the payment, reporting, and remittance to the state of the occupation tax set forth above.

"In no event shall a purchaser be relieved of responsibility to the state for the tax until it is paid. The tax shall be the primary responsibility of the first purchaser; provided however, that the failure of the producer to remit the tax to the state shall not relieve the first purchaser or any subsequent purchaser from its payment, and it shall be the duty of every person purchasing gas produced in Texas to satisfy himself that the tax on said gas has been paid to the state."

The amendment to the Committee Amendment was read.

Senator Hardeman moved to table the amendment to the Committee Amendment.

Question—Shall the amendment to the pending Committee Amendment be tabled?

**Committee to Escort Ambassador
Heath to Joint Session**

The President announced the appointment of the following committee pursuant to the provisions of H. C. R. No. 7: Senators Herring, Hall, Schwartz, Jordan and Creighton.

Joint Session

(To hear an address by the Honorable W. W. Heath, United States Ambassador to Sweden.)

The President announced that the time had arrived pursuant to the provisions of H. C. R. No. 7 for a Joint Session to hear an address by the Honorable W. W. Heath, United States Ambassador to Sweden.

The President of the Senate and the Senators present proceeded to the Hall of the House of Representatives at 11:00 o'clock a.m. to hear an address by the Honorable W. W. Heath, United States Ambassador to Sweden, pursuant to the provisions of H. C. R. No. 7.

The Senators were announced and were admitted and escorted to seats prepared for them along the aisle.

The Ambassador's party, including Governor John Connally and former Ambassador Edward Clark, was escorted to the Speaker's Rostrum by Senators Herring, Hall, Schwartz, Jordan and Creighton on the part of the Senate, and Representatives Cory, Fondren, Clayton, Atwell, Mutscher, Cavness, Foreman, Armstrong, Angly and Ward on the part of the House.

The President called the Senate to order and announced a quorum of the Senate present.

The Speaker of the House called the House to order, requested the Members to register and announced a quorum of the House present.

The Speaker of the House stated the purpose of the Joint Session and presented the Honorable John Connally, Governor of the State of Texas, to the Joint Session.

Governor Connally enumerated some of the many services rendered by Ambassador Heath to the State of Texas and presented him to the Joint Session.

Ambassador Heath addressed the Joint Session.

At the conclusion of the Joint Session the President of the Senate expressed appreciation to Ambassador Heath for his presence and for the wonderful service he was rendering his country. President Smith presented Ambassador Heath with an enrolled copy of H. C. R. No. 7.

The Speaker of the House addressed the Joint Session expressing appreciation to Ambassador Heath for his address and for taking the time to appear. He also expressed the affection of his many friends for the service he was rendering.

The Speaker then announced the purpose of the Joint Session concluded

ed and announced the House would stand At Ease.

The President announced at 11:43 o'clock a.m. the purpose of the Joint Session having been concluded, the Members of the Senate would retire to its Chamber.

In Legislative Session

The President called the Senate to order as In Legislative Session at 11:50 o'clock a.m. today.

House Bills on First Reading

The following bills received from the House, were read the first time and referred to the Committees indicated:

H. B. No. 23, To Committee on Counties, Cities and Towns.

H. B. No. 11, To Committee on Jurisprudence.

Recess

On motion of Senator Aikin the Senate at 11:53 o'clock a.m. took recess until 2:00 o'clock p.m. today.

After Recess

The President called the Senate to order at 2:00 o'clock p.m. today.

Presentation of Plaque in Memory of Former Senator George Parkhouse

The President announced that the Members of the Dallas Delegation in the Senate composed of Senators Wade, Harris, Mauzy and Hall had as a guest Mr. Bart Rominger, President of the Dallas Advertising League of Dallas. Mr. Rominger was escorted to the President's Rostrum by the Members of the Dallas Delegation.

The President presented Mr. Rominger and he addressed the Senate as follows:

"Governor Smith and distinguished Members of the Senate, I stand here this afternoon on behalf of an organization I serve as President, the Dallas Advertising League, to join with you in honoring the memory of a most unusual man.

"You remember George Parkhouse as a warm friend and colleague. You remember him as a dedicated public servant. You remember him for many

different things than we do . . . and many of the same ones.

"To us, George Parkhouse was a warm friend and dedicated public servant. But we also knew him as an advertising man. And a good one. He loved his business and always said he was proud to be a part of it.

"And he loved his Dallas Advertising League. George was a member for many years and a dedicated worker for Dallas' oldest service organization.

"For as long as I can remember, George Parkhouse served as chairman of our Government Relations Committee . . . and he took a true interest in its progress and its success. He sincerely worked to assure that advertising was doing its best job for Texas. When we could be doing a better job, he was the first to tell us. When a cry was raised against our profession, he was the first to defend it.

"George had a unique and leading role in the campaign of the Dallas Advertising League and other groups to win voter approval of a constitutional amendment permitting the expenditure of State funds for industrial and tourist advertising. This led to legislation, enacted largely through his efforts, which created the successful Texas Tourist Development Agency.

"In recognition of his service to the Dallas Advertising League and his State and his profession as a whole, two years ago this month I had the distinct honor of participating in the presentation of an honorary life membership in the League to George.

"Yes, George Parkhouse was a most unusual man. We in advertising and we in the Dallas Advertising League mourn his passing as you do. He was a worker. A leader. A contributor. A man who said what he believed and stood tall against all comers for his beliefs.

"In George's memory, we offer a plaque, hopefully to be permanently affixed to this Chamber he loved so much. It reads, 'In grateful tribute to George Parkhouse, Member of the Texas Senate for sixteen years. In his effective and dual role as legislator and advertising man, his civic dedication, unswerving devotion to principle and relentless efforts in behalf of many vital causes, reflected great credit upon the advertising industry and exemplified its high purpose in the public interest. Signed: The Dallas Advertising League.'"

Mr. Rominger then presented the plaque to Senator Aikin, the Dean of the Senate.

Senator Aikin accepted the plaque on behalf of the Senate, stating:

"On behalf of the Senate, I am happy for the opportunity to accept this plaque. I, as all of you here, served with him and some of us served all of the sixteen years he was here—and knew him as a beloved colleague.

"I first saw him in 1933 on the campus of East Texas State College. We were both newly-elected House members. I knew him from then until his passing last year. I would just say this to you—all of us here appreciate very much receiving this plaque. We will be happy to place it in the Senate Chamber and I think I would express every Member's feelings here when I say that we loved him, we admired him, we respected him, and he left a record that has been equaled by few and excelled by none. Thank you."

Message From the House

Hall of the House of Representatives
Austin, Texas,
June 26, 1968.

Hon. Preston Smith, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following:

H. C. R. No. 25, In memory of Warren Sayers Hatfield.

H. B. No. 20, A bill to be entitled "An Act relating to tuition fees collected by institutions of collegiate rank supported in whole or in part by public funds; amending Subsections (a) and (b), Section 1, Chapter 196, Acts of the 43rd Legislature, Regular Session, 1933, as amended (Article 2654c, Vernon's Texas Civil Statutes); repealing Subsection (c), Section 1, Chapter 196, Acts of the 43rd Legislature, Regular Session, 1933, as amended (Article 2654c, Vernon's Texas Civil Statutes); and declaring an emergency."

Respectfully submitted,

DOROTHY HALLMAN,
Chief Clerk, House of Representatives

House Bill on First Reading

The following bill received from the House, was read the first time and referred to the Committee indicated:

H. B. No. 20, To Committee on Finance.

Resolution Signed

The President signed in the presence of the Senate after the caption had been read, the following enrolled resolution:

H. C. R. No. 19, Memorial resolution for Mrs. Gertrude Hopkins Mann.

House Bill 2 on Second Reading

The Senate resumed the consideration of the pending business, same being H. B. No. 2 on its second reading and passage to third reading, with a motion to table the amendment by Senator Strong to Committee Amendment No. 2 pending.

Question—Shall the amendment by Senator Strong to the pending Committee Amendment be tabled?

On motion of Senator Strong, and by unanimous consent, he withdrew the pending amendment to the Committee Amendment.

Senator Strong then offered the following amendment to the pending Committee Amendment:

Amend Committee Amendment No. 2 to House Bill No. 2 by changing the word and figure eight (8) where found therein to seven (7) and including under Article 3.01 the following Section (1a), which shall immediately follow Section 1 therein:

"(1a) There is hereby imposed an additional gas production tax upon the first purchaser of gas, at the rate of one per cent (1%) of the market value, as and when produced, of all gas produced, saved and sold, that is severed from the earth and waters of Texas, and is produced for the first purchaser by virtue of a contract that imposes upon the producer of the gas the duty to sever the gas from the earth and waters of this state and then to deliver same to said purchaser.

"The term 'market value' shall mean the market value as defined in Article 3.02 of this Chapter.

"The tax hereby imposed shall be the liability of said purchaser of gas.

"Every such purchaser shall be liable to collect, report, and remit to the state this tax in the same manner and with the same responsibilities and

liabilities as are imposed by this chapter upon the producer for the payment, reporting, and remittance to the state of the present gas production tax.

"In no event shall a purchaser be relieved of responsibility to the state for the tax until it is paid. The tax shall be the primary responsibility of the first purchaser; provided however, that the failure of the purchaser to remit the tax to the state shall not relieve the first purchaser or any subsequent purchaser from its payment, and it shall be the duty of every person purchasing gas produced in Texas to satisfy himself that the tax on said gas has been paid to the state.

"If for any reason the first purchaser or subsequent purchaser of such gas fails to pay and remit to the State of Texas this additional gas production tax of one per cent (1%) herein levied, then the producer of such gas as herein defined shall pay and remit said tax to the State.

"The State of Texas shall have the same liens and enforcement remedies to enforce the payment of this additional tax as is now available against the producer of gas.

"The legislature finds that the failure of the producer to pass the gas tax on to the purchaser thereof results in both an economic and physical waste of gas."

The amendment was read.

Senator Hardeman moved to table the amendment to the pending Committee Amendment.

Question on the motion to table the amendment to the pending Committee Amendment, "Yeas" and "Nays" were demanded.

The motion to table prevailed by the following vote:

Yeas—19

Bates	Hazlewood
Berry	Hightower
Blanchard	Moore
Brooks	Patman
Christie	Ratliff
Cole	Reagan
Grover	Wade
Hall	Watson
Hardeman	Wilson
Harris	

Nays—12

Aikin	Jordan
Bernal	Kennard
Connally	Mauzy
Creighton	Schwartz
Harrington	Strong
Herring	Word

Question recurring on the pending Committee Amendment by Senator Schwartz.

Senator Hardeman moved to table the Committee Amendment.

Question on the motion to table, "Yeas" and "Nays" were demanded.

The motion to table prevailed by the following vote:

Yeas—16

Bates	Harris
Berry	Hazlewood
Blanchard	Hightower
Brooks	Ratliff
Cole	Reagan
Creighton	Wade
Grover	Watson
Hardeman	Wilson

Nays—15

Aikin	Kennard
Bernal	Mauzy
Christie	Moore
Connally	Patman
Hall	Schwartz
Harrington	Strong
Herring	Word
Jordan	

Senator Hardeman offered the following Committee Amendment to the bill:

Amend H. B. No. 2 by striking out Section 9 thereof and renumbering the following sections accordingly.

The Committee Amendment was read and was adopted.

Senator Hardeman offered the following Committee Amendment to the bill:

Sec. 5a. Section (T) of Article 20.04, Chapter 20, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read:

"(T) Vending Machine Sales.

"(1) There are exempted from the taxes imposed by this Chapter the receipts from the sale of tangible per-

sonal property when sold through a coin-operated vending machine for a total consideration of sixteen cents (16¢) or less.

The Committee Amendment was read and was adopted.

Senator Hardeman offered the following Committee Amendment to the bill:

"Sec. 5 Subdivision 2, Subsection (K), Section 2, Chapter 36, Acts of the 60th Legislature Regular Session, 1967 (Article 1066c, Vernon's Texas Civil Statutes), is amended to read as follows:

"(2) When such Limited Sales, Excise and Use Tax imposed by the State of Texas shall be at the rate of three percent (3%) on the receipts from the sale at retail of all tangible personal property within this State which is subject to such tax, and the Local Sales and Use Tax imposed in any City under authority of this Act shall be at the rate of one percent (1%) on the receipts from the sale of all tangible personal property within such city which is subject to such tax, the total gross rate of such combined taxes in such city shall be at the rate of four percent (4%) on the receipts from the sale of all tangible personal property within such city which is subject to such taxes. When the sale price shall involve a fraction of a dollar, the taxes shall be added to the sale price upon the following schedule:

Amount of Sale	Tax
\$.01 to \$.12	No Tax
.13 to .37	\$.01
.38 to .62	.02
.63 to .87	.03
.88 to 1.12	.04
1.13 to 1.37	.05
1.38 to 1.62	.06
1.63 to 1.87	.07

Provided that for successive brackets for this schedule in this paragraph, the tax shall be computed by multiplying four percent (4%) times the amount of the sale. Any fraction of one cent (\$.01) which is less than one half of one cent (\$.005) of tax shall not be collected. Any fraction of one cent (\$.01) of tax equal to one half of one cent (\$.005) or more shall be collected as a whole cent (\$.01) of tax."

Provided, however, that any retailer who can establish to the satisfaction

of the Comptroller that fifty percent (50%) or more of his receipts from the sale of tangible personal property arise from individual transactions where the total sales price is twelve cents (\$.12) or less may exclude the receipts from such sales when reporting and paying the tax imposed under this Act and the Limited Sales, Excise and Use Tax imposed by the State of Texas. No retailer shall avail himself of this provision without prior written approval of the Comptroller. The Comptroller shall grant such approval when he is satisfied that the retailer qualifies on the basis set forth in this Section and when the retailer has submitted satisfactory evidence that he can and will maintain records adequate to substantiate the exclusion herein authorized. Any attempt on the part of any retailer to exercise this provision without prior written approval of the Comptroller shall be deemed to be a failure and refusal to pay the taxes imposed by this Act and the Limited Sales, Excise and Use Tax Act and the retailer shall be subject to assessment for both taxes, penalties and interest as provided for in this Act and the Limited Sales, Excise and Use Tax Act.

The Committee Amendment was read and was adopted.

Senator Hardeman offered the following Committee Amendment to the bill:

Sec. 6a. Section (J) of Article 20.05, Chapter 20, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read:

“(J) Commingled Tax and Receipts

“Any retailer who establishes an accounting system under which the amount of tax collected pursuant to this Chapter is commingled with the receipts from the sale of tangible personal property may determine taxable receipts in the following manner:

“(1) He shall subtract from his total receipts the receipts from any sales which are specifically exempt from or otherwise excluded from the tax imposed by this Chapter. The remainder shall consist of the receipts from the sale of tangible personal property plus the tax collected pursuant to the provisions of this Chapter.

“(2) This remainder shall then be

divided by 1.03. The answer resulting shall be the taxable gross receipts of the retailer for reporting purposes as prescribed by Section (B) of this Article.

“The sole purpose of this Section is to permit the widest possible latitude in the internal accounting systems of retailers and to avoid requiring certain retailers to remit to the State a tax computed upon a base which already includes the tax imposed by this Chapter. Nothing herein shall be construed to relieve the retailer of the obligation and duty of collecting the tax in the specific manner prescribed by Article 20.021 of this Chapter.”

The Committee Amendment was read and was adopted.

Senator Hardeman offered the following Committee Amendment to the bill:

Amend H. B. No. 2 by adding a new section 6b to read as follows:

Sec. 6b. Section (T) of Article 20.01, Chapter 20, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

“20.01(T) Contractor or Repairman. ‘Contractor or Repairman’ shall mean any person who performs any repair services upon tangible personal property or who performs any improvement upon real estate and who, as a necessary and incidental part of performing such services, incorporates tangible personal property belonging to him into the property being so repaired or improved. Contractor or repairman shall be considered to be the consumer of such tangible personal property furnished by him and incorporated into the property of his customer, for all the purposes of this Chapter.

There are exempted from the computation of the amount of taxes imposed by this Chapter, the receipts from the sale, lease or rental of any tangible personal property to, or the storage, use or other consumption of tangible personal property by any contractor for the performance of a contract for the improvement of realty for an exempt organization as defined in Section 20.04(F) of this Chapter or otherwise exempt from the taxes imposed by this Chapter to the extent of the value of the tangible personal property so used and/

or consumed in the performance of such contract. Any such contractor may purchase, rent or lease all materials, supplies, equipment and other items incorporated into the project or any such item used and/or consumed by the contractor in performing said contract by issuing to the retailer from whom the materials, supplies, equipment or other items were purchased, rented or leased an exemption certificate in lieu of any tax imposed by this Chapter."

The Committee Amendment was read.

Senator Patman moved to table the pending Committee Amendment.

"Yeas" and "Nays" were demanded.

The motion to table was lost by the following vote:

Yeas—8

Bernal	Harris
Brooks	Herring
Grover	Mauzy
Harrington	Patman

Nays—23

Aikin	Jordan
Bates	Kennard
Berry	Moore
Blanchard	Ratliff
Christie	Reagan
Cole	Schwartz
Connally	Strong
Creighton	Wade
Hall	Watson
Hardeman	Wilson
Hazlewood	Word
Hightower	

Question recurring on the adoption of the Committee Amendment, the Committee Amendment was then adopted.

Record of Vote

Senator Patman asked to be recorded as voting "nay" on the adoption of the above Committee Amendment.

Senator Wilson offered the following amendment to the bill:

Amend House Bill No. 2 by striking all below the enacting clause and substituting the following:

Section 1. Section (D), Article 20.01, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925,

as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(D) Receipts.

"(1) 'Receipts' means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers or the total amount charged for a taxable service, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

"(a) The cost of the tangible personal property sold. However, in accordance with such rules and regulations as the Comptroller may prescribe, a deduction may be taken if the retailer has purchased tangible personal property for some purpose other than resale, has reimbursed his vendor for tax which the vendor is required to pay to the State or has paid the use tax with respect to the tangible personal property, and has resold the tangible personal property prior to making any use of the tangible personal property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the tangible personal property.

"(b) The cost of the materials used, labor or service costs, interest paid, losses or any other expenses.

"(c) The cost of transportation of the tangible personal property prior to its sale to the purchaser.

"(d) The cost of transportation incident to the performance of a taxable service.

"(2) 'Receipts' does not include any of the following:

"(a) Cash discounts allowed on sales.

"(b) Sales price of tangible personal property returned by customers when the full sales price is refunded either in cash or credit.

"(c) The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

"(d) The amount charged for finance charges, carrying charges, serv-

ice charges or interest from credit extended on sales of tangible personal property under conditional sale contracts or other contracts providing for deferred payments of the purchase price.

"(e) The value of tangible personal property taken by a seller in trade as all or a part of the consideration for a sale of tangible personal property of any kind or nature.

"(f) Charges for transportation of tangible personal property after sale."

Sec. 2. Section (F), Article 20.01, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(F) Occasional Sale. 'Occasional Sale' means:

"(1) One or two sales of tangible personal property or taxable services at retail during any twelve-month period by a person who does not hold himself out as engaging (or who does not habitually engage) in the business of selling such tangible personal property or taxable services at retail.

"(2) The sale of the entire operating assets of a business or of a separate division, branch or identifiable segment of a business. For the purpose of this Subsection a 'separate division, branch or identifiable segment' shall be deemed to exist if prior to its sale the income and expenses attributable to such 'separate division, branch or identifiable segment' could be separately ascertained from the books of account or record. The purpose of this Subsection is to clarify existing law and merely expresses the original intention of the Legislature.

"(3) Any transfer of all or substantially all the property held or used by a person in the course of an activity when after such transfer the real or ultimate ownership of such property is substantially similar to that which existed before such transfer. For the purposes of this Subsection, stockholders, bondholders, partners or other persons holding an interest in a corporation or other entity are regarded as having the 'real or ultimate ownership' of the property of such corporation or other entity."

Sec. 3. Section (G), Article 20.01, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chap-

ter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(G) Purchase. 'Purchase' means:

"(1) Any transfer of title or possession, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration.

"(2) A transaction whereby the possession of tangible personal property is transferred but the seller retains the title as security for the payment of the price.

"(3) A transfer, for a consideration, of tangible personal property which has been produced, fabricated or printed to the special order of the customer.

"(4) The acceptance or utilization of any taxable service for a consideration."

Sec. 4. Section (I), Article 20.01, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(I) Retail Sale or Sale at Retail. 'Retail Sale' or 'Sale at Retail' means:

"(1) Any sale of tangible personal property or taxable service.

"(2) The delivery in this State of tangible personal property by an owner or former owner thereof or by a factor or agent of such owner, former owner or factor, if the delivery is to a consumer or person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in this State. The person making the delivery in such cases shall include the retail selling price of the tangible personal property in his receipts."

Sec. 5. Subsection (1), Section (J), Article 20.01, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(1) 'Retailer' includes:

"(a) Every seller engaged in the business of making sales of tangible personal property for storage, use or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use or other consumption.

"(b) Every person making more than two (2) retail sales of tangible personal property during any twelve-month period, including sales made in the capacity of assignee for the benefit of creditors, or receiver or trustee in bankruptcy.

"(c) Every person who leases or rents to another tangible personal property for storage, use or other consumption, except that person engaged in the leasing or licensing of motion picture films of any kind or character to motion picture theatres, television stations and others shall be liable for the tax levied under the provisions of this law, and they shall not pass said tax along to the person or persons to whom they lease or license said motion picture films.

"(d) Every person selling taxable services."

Sec. 6. Subsection (1), Section (K), Article 20.01, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(1) 'Sale' means and includes any transfer of title or possession, or segregation in contemplation of transfer of title or possession, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration. 'Sale' includes the performance of a taxable service for a consideration."

Sec. 7. Section (L), Article 20.01, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(L) Sales Price.

"(1) 'Sales Price' means the total amount for which tangible personal property or a taxable service is sold, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

"(a) The cost of the tangible personal property sold.

"(b) The cost of material used, labor or service costs, interest paid, losses, or any other expenses.

"(c) The cost of transportation of the tangible personal property prior to its sale or purchase.

"(d) The cost of transportation in-

cident to the performance of a taxable service.

"(2) The total amount for which tangible personal property is sold includes all of the following:

"(a) Any services which are a part of the sale.

"(b) Any amount for which credit is given to the purchaser by the seller.

"(3) 'Sales Price' does not include any of the following:

"(a) Cash discounts allowed on sales.

"(b) The amount charged for tangible personal property returned by customers when the entire amount charged therefor is refunded either in cash or credit.

"(c) The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

"(d) The amount charged for finance charges, carrying charges, service charges or interest from credit extended on sales of tangible personal property under conditional sale contracts or other contracts providing for deferred payments of the purchase price.

"(e) The value of tangible personal property taken by a seller in trade as all or a part of the consideration for a sale of tangible personal property of any kind or nature.

"(f) Charges for transportation of tangible personal property after sale."

Sec. 8. Section (M), Article 20.01, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(M) Seller. 'Seller' includes every person engaged in the business of selling, leasing or renting tangible personal property or taxable services of a kind, the receipts from the retail sale, lease or rental of which are required to be included in the measure of the limited sales tax."

Sec. 9. Section (R), Article 20.01, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(R) Use. 'Use' includes the exercise of any right or power over tangible personal property incident to the ownership of that tangible personal property except that it does not include the sale of that tangible personal property in the regular course of business or the transfer of tangible personal property as an integral part of a taxable service rendered in the regular course of business. 'Use' specifically includes the incorporation of tangible personal property into real estate or into improvements upon real estate without regard to the fact that such real estate and improvements may subsequently be sold as such except as provided in Article 20.01(T) (2)."

Sec. 10. Section (S), Article 20.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(S) Sale for Resale. 'Sale for Resale' means:

"(1) A sale of tangible personal property to any purchaser who is purchasing said tangible personal property for the purpose of reselling it in the normal course of business either in the form or condition in which it is purchased, or as an attachment to, or integral part of, other tangible personal property.

"(2) A sale of tangible personal property to a purchaser for the sole purpose of that purchaser's renting or leasing the tangible personal property to another person, but not if incidental to the renting or leasing of real estate.

"(3) A sale of tangible personal property to any purchaser who is purchasing the tangible personal property for the purpose of subsequently transferring it as an integral part of a taxable service."

Sec. 11. Section (T), Article 20.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"Article 20.01(T). Contractor or Repairman. 'Contractor or Repairman' shall mean any person who performs any repair services upon tangible personal property or who performs any improvement upon real estate and who, as a necessary and incidental part of performing such services, incorporates tangible personal property belonging to him into

the property being so repaired or improved. Contractor or repairman shall be considered to be the consumer of such tangible personal property furnished by him and incorporated into the property of his customer, for all the purposes of this Chapter.

"There are exempted from the computation of the amount of taxes imposed by this Chapter, the receipts from the sale, lease or rental of any tangible personal property to, or the storage, use or other consumption of tangible personal property by any contractor for the performance of a construction contract for the improvement of realty for any exempt organization as defined in Section 20.04 (F) of this Chapter. Any such contractor may purchase, rent or lease all materials, supplies, equipment and other items incorporated into the project or the value of any such item used and/or consumed by the contractor in performing said construction contract by issuing to the retailer from whom the materials, supplies, equipment, or other items were purchased, rented, or leased an exemption certificate in lieu of any tax imposed by this Chapter."

Sec. 12. Section (U), Article 20.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(U) Manufacturing. 'Manufacturing' shall mean and include every operation commencing with the first production stage of any article of tangible personal property and ending with the completion of tangible personal property having the physical properties (including packaging, if any) which it has when transferred by the manufacturer to another. 'Manufacturing' shall include the production of telephone and telegraph services."

Sec. 13. Article 20.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended by adding a new Section (V) to read as follows:

"(V) Taxable Services. 'Taxable Services' mean the following:

"(1) Advertising in directories, shopper's guides, newspapers, and magazines, whether or not such publications are circulated free or without charge to the public; advertising

on radio, movie, television, and outdoor signs; and point-of-purchase performance advertising.

"(2) Intrastate telephone service to a regular subscriber including local and long distance calls whether furnished on a flat rate or measured basis, and including the lease or use of telephone lines, wires or equipment; and

"(3) Transmitting an interstate message by telegraph."

Sec. 14. Article 20.02, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"Article 20.02. Imposition of Limited Sales Tax. There is hereby imposed a limited sales tax at the rate of two percent on the receipts from the sale at retail of all tangible personal property and taxable services within this state."

Sec. 15. Subsection (1), Section (B), Article 20.021, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(1) It is unlawful for any retailer to advertise or to hold out or to state to the public or to any customer, either directly or indirectly, that the tax or any part thereof will be assumed or absorbed by him or that any part of it will be refunded or that it will not be added to the selling price of the tangible personal property or taxable services sold. Provided, however, that this section does not prohibit any utility from billing its customers in one lump sum covering the utility sales price plus the tax imposed by this chapter."

Sec. 16. Section (F), Article 20.021, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, 1963, is amended to read as follows:

"(F) Presumption of Taxability: Resale Certificate. For the purpose of the proper administration of this Chapter and to prevent evasion of the limited sales tax it shall be presumed that all gross receipts are subject to the tax until the contrary is established.

"The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he takes from the purchaser a certificate to

the effect that the tangible personal property is purchased for the purpose of reselling, leasing or renting it in the regular course of business or for the purpose of subsequently transferring it as an integral part of a taxable service rendered in the regular course of business."

Sec. 17. Section (G), Article 20.021, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, 1963, is amended to read as follows:

"(G) Effect of Resale Certificate. The resale certificate relieves the seller from the burden of proof only if taken in good faith from a person who is engaged in the business of selling, leasing or renting tangible personal property or taxable services. A resale certificate may be given by a purchaser, who at the time of purchasing the tangible personal property, intends to sell, lease or rent it in the regular course of business, transfer it as an integral part of a taxable service in the regular course of business or is unable to ascertain at the time of purchase whether the tangible personal property will be resold, leased, rented, or transferred in the regular course of business or will be used for some other purpose."

Sec. 18. Subdivision (1), Section (H), Article 20.021, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(1) The certificate shall:

"(a) Be signed by and bear the name and address of the purchaser.

"(b) Indicate the number of the permit issued to the purchaser or that an application for such permit is pending before the Comptroller.

"(c) Indicate the general character of the tangible personal property sold, leased or rented by the purchaser in the regular course of business, or transferred as an integral part of a taxable service rendered in the regular course of business."

Sec. 19. Section (I), Article 20.021, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(I) Liability of Purchaser Giving Resale Certificate. If a purchaser who gives a resale certificate makes any use of the tangible personal property

other than retention, demonstration or display while holding it for sale, lease or rental in the regular course of business or for transfer as an integral part of a taxable service in the regular course of business the use shall be taxable to the purchaser as of the time when the tangible personal property is first so used, and the sales price of the tangible personal property to him shall be deemed the measure of the tax."

Sec. 20. Section (J), Article 20.021, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(J) Improper Use of Resale Certificate. Any person who gives a resale certificate to the seller for tangible personal property which he knows, at the time of purchase, is purchased for the purpose of use rather than for the purpose of resale, lease or rental by him in the regular course of business or for transfer by him as an integral part of a taxable service rendered in the regular course of business is guilty of a misdemeanor and shall upon conviction suffer the penalties set forth in Article 20.12(B) of this Chapter."

Sec. 21. Sections (G), (H), (I), and (J), of Article 20.03, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, are amended to read as follows:

"(G) Effect of Resale Certificate. The resale certificate relieves the seller from the burden of proof only if taken in good faith from a person who is engaged in the business of selling tangible personal property or taxable services. A resale certificate may be given by a purchaser who, at the time of purchasing the tangible personal property, intends to sell, lease or rent it in the regular course of business, transfer it as an integral part of a taxable service rendered in the regular course of business or is unable to ascertain at the time of purchase whether the tangible personal property will be sold, leased or rented or will be used for some other purpose.

"(H) Form and Contents of Resale Certificate.

"(1) The certificate shall:

"(a) Be signed and bear the name and address of the purchaser.

"(b) Indicate the number of the permit issued to the purchaser or that an application for such permit is pending before the Comptroller.

"(c) Indicate the general character of the tangible personal property sold, leased or rented by the purchaser in the regular course of business.

"(2) The certificate shall be substantially in such form as the Comptroller may prescribe.

"(I) Liability of Purchaser Giving Resale Certificate; Use of Article Bought for Resale. If a purchaser who gives a resale certificate makes any use of the tangible personal property other than retention, demonstration or display while holding it for sale, lease or rental, in the regular course of business, the use shall be taxable to the purchaser as of the time when the tangible personal property is first so used, and the sales price of the property to him shall be deemed the measure of the tax.

"(J) Improper Use of Resale Certificate. Any person who gives a resale certificate to the seller for tangible personal property which he knows, at the time of purchase, is purchased for the purpose of use rather than for the purpose of resale, lease or rental by him in the regular course of business is guilty of a misdemeanor and shall upon conviction suffer the penalties set forth in Article 20.12(B) of this Chapter."

Sec. 22. Article 20.04, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Chapter 464, Acts of the 60th Legislature, Regular Session, 1967, is amended to read as follows:

"Article 20.04. Exemptions.

"(A) 'Exempted from taxes imposed by this Chapter' means exempted from the computation of the amount of the taxes imposed.

"(B) Exemption Certificates. If a purchaser certifies in writing to a seller that the tangible personal property or taxable services purchased will be used in a manner or for a purpose entitling the seller to regard the receipts from the sale as exempted by this Chapter from the computation of the amount of the limited sales tax, and if the purchaser then uses the tangible personal property or taxable services in some other manner or for some other purpose, the purchaser shall be liable for payment of the limited sales tax as if he were a retailer making a retail sale

of the tangible personal property or taxable services to him shall be deemed the receipts from such retail sale for the purpose of determining the amount of tax for which he is liable.

"Any person who gives an exemption certificate to the seller for tangible personal property or taxable services which he knows, at the time of purchase, will be used in a manner other than that expressed in the exemption certificate is guilty of a misdemeanor and shall upon conviction suffer the penalties set forth in Article 20.12(B) of this Chapter.

"(C) Constitution and Statutory Exemptions. There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of and the storage, use or other consumption in this state of tangible personal property and taxable services the gross receipts from the sale, lease or rental of which, or the storage, use or other consumption of which, this State is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this State.

"(D) Items Taxed Under Existing Statutes.

"(1) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental, production or distribution, or the storage, use or other consumption in this State of:

"(a) oil as taxed under the provisions of Chapter 4 of this Title;

"(b) sulphur as taxed under the provisions of Chapter 5 of this Title;

"(c) motor fuels as defined, taxed or exempted under the provisions of Chapter 9 of this Title;

"(d) special fuels as defined, taxed or exempted under the provisions of Chapter 10 of this Title;

"(e) cement as taxed under the provisions of Chapter 18 of this Title; and

"(f) motor vehicles, trailers and semitrailers as defined and taxed under the provisions of Chapter 6 of this Title.

"(2) There are exempted from the taxes imposed by this Chapter the receipts from the sale, production, distribution, lease or rental of and the storage, use or other consumption in this State of water.

"(E) Property Used in Manufacturing, Packaging and Containers.

"(1) Tangible Personal Property

Used in Manufacturing. There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, and the storage, use or other consumption in this State of:

"(a) Tangible personal property which will enter into and become an ingredient or component part of tangible personal property manufactured, processed or fabricated for ultimate sale at retail within or without this State; and

"(b) Tangible personal property used or consumed in or during any phase of such actual manufacturing, processing or fabricating operation, provided that the use or consumption of such tangible personal property is necessary or essential to the performance of such operations. Chemicals, catalysts, and other materials which are used during such operations and which are used for the purpose of producing or inducing a chemical or physical change during such operations or for removing impurities or otherwise placing a product in a more marketable condition are included within the exemption, as are other articles of tangible personal property used in such a manner as to be necessary or essential in the actual manufacturing, processing, or fabricating operations. The exemption provided herein does not include the following:

"(i) Machinery, equipment and replacement parts and accessories therefor, having a useful life when new in excess of six (6) months;

"(ii) Machinery, equipment, materials and supplies used in a manner that is merely incidental to the manufacturing, processing or fabricating operation such as intraplant transportation equipment, and maintenance and janitorial equipment and supplies;

"(iii) Hand tools such as hammers, wrenches, saws, etc.; and

"(iv) Tangible personal property used by a manufacturer, processor or fabricator in any activities other than the actual manufacturing, processing or fabricating operation such as office equipment and supplies, equipment and supplies used in selling or distributing activities, in research and development of new products, or in transportation activities.

"(2) Wrapping, Packing and Packaging Supplies.

"(a) There are exempted from the taxes imposed by this Chapter the receipts from sales of all internal and

external wrapping, packing, and packaging supplies and materials to any person for use in wrapping, packing or packaging any tangible personal property for the purpose of expediting or furthering in any way the sale of that property.

"(b) For the purpose of this Section, wrapping, packing and packaging supplies shall include, but shall not be limited to:

"(1) Wrapping paper, wrapping twine, bags, cartons, crates, crating materials, tape, rope, labels, staples, glue and mailing tubes.

"(2) Property used inside a package in order to shape, form, preserve, stabilize or protect the contents, such as, but not limited to, excelsior, straw, cardboard fillers, separators, shredded paper, ice, dry ice, cotton batting, shirt boards, hay and laths.

"(3) Containers.

"(a) There are exempted from the taxes imposed by this Chapter the receipts of sales, leases, or rentals of, and the storage, use or other consumption in this State of:

"(1) Nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container.

"(2) Containers when sold with the contents if the sale price of the contents is not required to be included in the measure of the taxes imposed by this Chapter.

"(3) Returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling.

"(a) As used in this Article, the term 'returnable containers' means containers of a kind customarily returned by the buyer of the contents for re-use. All other containers are 'nonreturnable containers.'

"(F) Certain Meals and Food Products. There are exempted from the taxes imposed by this Chapter the receipts from the sale of, and the storage, use or other consumption in this State of:

"(1) Meals and food products (including soft drinks and candy) for human consumption served by public or private schools, school districts, student organizations, or Parent-Teacher Associations pursuant to an agreement with the proper school authorities, in an elementary or secondary school during the regular school day.

"(2) Meals and food products (including soft drinks and candy) for human consumption when sold by a church or at a function of said church.

"(3) Meals and food products (including soft drinks and candy) for human consumption when served to patients and inmates of hospitals and other institutions licensed by the State for the care of human beings.

"(G) Interstate Shipments.

"(1) Property Shipped Outside State Pursuant to Sales Contract; Delivery by Retailer. There are exempted from the taxes imposed by this Chapter receipts from any sale of tangible personal property which, pursuant to the contract of sale, is shipped to a point outside this State by the retailer by means of:

"(a) Facilities operated by the retailer.

"(b) Delivery by the retailer to a carrier for shipment to a consignee at such point; or

"(c) Delivery by the retailer to a customs broker or forwarding agent for shipment outside this State.

"(2) Common Carriers. There are exempted from the computation of the limited sales tax, the receipts from sales of tangible personal property to a common carrier, shipped by the seller via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this State and the tangible personal property is actually transported to the out-of-State destination for use by the carrier in the conduct of its business as a common carrier outside the State of Texas.

"(3) Special Use Tax Exemption. The use tax imposed herein shall not apply to:

"(a) The use, in this State, of tangible personal property which is acquired outside this State and which is moved into this State for use as a licensed and certified carrier of persons or property.

"(b) The temporary storage in this State of tangible personal property which is acquired outside this State and which, subsequent to being brought into this State and stored here temporarily, is used solely outside this State or is physically attached to or incorporated into other tangible personal property which is used solely outside this State.

"(c) The storage, use or consumption of tangible personal property

which is acquired outside this State, the sale, lease or rental or the storage, use or consumption of which tangible personal property would be exempt from the limited sales or use tax were it purchased within this State.

"(d) The storage and use, in this State, of tangible personal property acquired outside this State for use as a repair or replacement part for and actually affixed in this State to a self-propelled vehicle which is a licensed and certificated common carrier of persons or property.

"(H) United States; State; Political Subdivisions; Religious, Eleemosynary Organizations. There are exempted from the computation of the amount of the taxes imposed by this Chapter, the receipt from the sale, lease or rental of any tangible personal property or taxable services to, or the storage, use or other consumption of tangible personal property or taxable services by:

"(1) The United States, its unincorporated agencies and instrumentalities.

"(2) Any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

"(3) The State of Texas, its unincorporated agencies and instrumentalities.

"(4) Any county, city, special district or other political subdivision of this State.

"(5) Any organization created for religious, educational, charitable or eleemosynary purposes, provided that no part of the net earnings of any such organization inures to the benefit of any private shareholder or individual.

"(6) Any contractor using and/or consuming tangible personal property in the performance of a written contract for the improvement of realty with any organization exempted in this section to the extent of the tangible personal property so used and/or consumed in the performance of such contract.

"(I) Occasional Sales. There are exempted from the taxes imposed by this Chapter the receipts from the occasional sales of tangible personal property and the storage, use or other consumption in this State of tangible personal property the transfer of which to the consumer constitutes an

occasional sale or the transfer of which to the consumer is made by way of an occasional sale.

"(K) Use Tax: Reciprocal Credit for Similar Taxes Paid Elsewhere. There shall be allowed as a credit to any taxpayer against the use tax imposed by this Chapter upon any tangible personal property, the amount of any like tax paid by that taxpayer in another state, territory or possession of the United States of America with respect to the sale, purchase or use of such property; provided that such other states, territories, or possessions provide for a similar tax credit for taxpayers of this State.

"(L) Use Tax Inapplicable When Limited Sales Tax Applies or When Use Tax Previously Paid. The storage, use or other consumption in this State of tangible personal property, the receipts from the sale, lease, rental or use of which are required to be included in the measure of the limited sales tax, or tangible personal property upon which a use tax has been paid by the taxpayer using said tangible personal property, is exempted from the use tax imposed by this Chapter.

"(M) Food and Food Products for Human Consumption. There are exempted from the taxes imposed by this Chapter the receipts from sales of, and the storage, use or other consumption of, food products for human consumption.

"(1) 'Food products' shall include, except as otherwise provided herein, but shall not be limited to, cereals and cereal products; milk and milk products, including ice cream; oleomargarine; meat and meat products; poultry and poultry products; fish and fish products; eggs and egg products; vegetables and vegetable products; fruit and fruit products; spices, condiments and salt; sugar and sugar products; coffee and coffee substitutes; tea, cocoa products; or any combination of the above.

"(2) 'Food products' shall not include:

"(a) Medicines, tonics, vitamins and medicinal preparations in any form.

"(b) Carbonated and noncarbonated packaged soft drinks and diluted juices where sold in liquid or frozen form; and ice and candy.

"(c) Foods and drinks (which include meals, milk and milk products, fruits and fruit products, sandwiches,

salads, processed meats and seafoods, vegetable juices, ice cream in cones or small cups) served, prepared or sold ready for immediate consumption in or by restaurants, drug stores, lunch counters, cafeterias, hotels or like places of business or sold ready for immediate consumption from push carts, motor vehicles, or any other form of vehicle. Provided, however, that food and drinks purchased by a common carrier for the purpose of serving passengers traveling en route abroad such carriers shall be exempt.

"(d) Alcoholic beverages of all types served or sold in any form, and any ingredients served or sold, mixed, or to be mixed, with alcoholic beverages.

"(N) Drugs, Medicines, Prosthetic Devices. There are exempted from the taxes imposed by this Chapter the receipts from sales of, and the storage, use or other consumption of insulin and of drugs and medicines including alcohol when prescribed or dispensed for humans or animals by a licensed practitioner of the healing arts. There are also exempted from the taxes imposed by this Chapter, the receipts from sales of and the storage, use or other consumption of braces, spectacles, hearing aids, orthopedic and dental prosthetic appliances, and replacement parts designed specifically for such products.

"(O) Animal Life; Feed; Seeds; Plants; Fertilizers. There are exempted from the taxes imposed by this Chapter the receipts from sales of, and the storage, use or other consumption of:

"(1) Any form of animal life of a kind the products of which ordinarily constitute food for human consumption. Horses, mules and similar work animals used on farms and ranches.

"(2) Feed for farm and ranch animals and for animals which are held for sale in the regular course of business.

"(3) Seeds and annual plants the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business.

"(4) Fungicides, insecticides, herbicides, defoliants and desiccants exclusively used or employed on farms or ranches in the production of food for human consumption, feed for any form of animal life, or other agricultural products to be sold in the regular course of business.

"(5) Fertilizer.

"(6) Farm machinery or equipment exclusively used or employed on farms or ranches in the production of food for human consumption, feed for any form of animal life, or other agricultural products to be sold in the regular course of business.

"(P) Sale for Resale: Leasing or Renting.

"(1) There are exempted from the taxes imposed by this Chapter the receipts from all sales for resale, leasing or renting.

"(2) However, if a person purchases tangible personal property for the purpose of leasing or renting it to another person, and if he later sells it by means of an occasional sale before he has collected and paid to this State as much tax on the rental or lease charges as would have been due and payable to this State had he not purchased the tangible personal property for the purpose of so renting and leasing it, he shall, at the time of his occasional sale of said tangible personal property include in his receipts from taxable sales the amount by which his purchase price exceeded the amount of rents collected by him on said tangible personal property.

"(3) When a lessor makes a retail sale of leased tangible personal property to a lessee of that tangible personal property under an agreement whereby certain rental payments are credited against the purchase price of that tangible personal property, he need not collect or pay any tax on the sale price to the extent that he has collected and paid on such rental payments.

"(Q) Vessels.

"(1) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, or the storage, use or other consumption in this State of materials, equipment and machinery which enter into and become component parts of ships, vessels, including commercial fishing vessels, or barges, of fifty (50) tons displacement and over, built in this State, and the receipts from the sale of such ships, vessels, or barges when sold by the builder thereof.

"(2) The taxes imposed by this Chapter shall not apply to the receipts from the sale, lease or rental of, or the storage, use or other consumption in this State of materials and supplies purchased by the owners or operators of ships or vessels operating exclusively in foreign or inter-

state coastwise commerce, where such materials and supplies are loaded upon the ship or vessel for use or consumption in the maintenance and operation thereof; or to materials and supplies used in the repair of such ships and vessels where such materials and supplies enter into and become a component part of such ships or vessels.

"(3) The taxes imposed by this Chapter shall not apply to the receipts from the sale, lease or rental of, or the storage, use or other consumption in this State of drilling equipment used in the exploration for or production of oil, gas, sulphur, or other minerals when such equipment is built for exclusive use outside the boundaries of the State and is removed forthwith from the State upon completion.

"(R) Certain Aircraft. There are exempted from the taxes imposed by this Chapter the receipts from the sale, use, storage, lease or other consumption of aircraft sold to persons using such aircraft as certificated or licensed carriers of persons or property, or sold to any foreign government or sold to persons who are not residents of this State.

"(S) Gas and Electricity. There are exempted from the taxes imposed by this Chapter the sale, production, distribution, lease or rental of and the storage, use or other consumption in this State of gas and electricity except when sold for residential use or commercial use.

"For the purpose of this Subsection, the terms 'residential use' and 'commercial use' shall have the following meanings:

"'Residential use' means use in a family dwelling or building or portion thereof occupied as the home, residence, or sleeping place of one or more persons.

"'Commercial use' means use by persons engaged in selling, warehousing or distributing a commodity or service, either professional or personal.

"The term 'commercial use' specifically does not include use by persons engaged in: (1) processing tangible personal property for sale as tangible personal property; (2) exploration for or production and transportation of a material extracted from the earth; (3) agriculture, including dairy or poultry operations and pumping water for farm and ranch irrigation; or, (4) electrical processes such

as electroplating, electrolysis and cathodic protection.

"(T) Rolling Stock. There are exempted from the taxes imposed by this Chapter receipts from any sale, use, storage or other consumption of locomotives and rolling stock, including fuel or supplies essential to the operation of locomotives and trains.

"(U) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, and the storage, use or other consumption in this State of books consisting wholly of writings sacred to any religious faith and religious periodicals published or distributed by any religious faith consisting wholly of writing promulgating the teachings of such faith.

"(V) Vending Machine Sales. (1) There are exempted from the taxes imposed by this Chapter the receipts from the sale of tangible personal property when sold through a coin-operated vending machine for a total consideration of twenty-four cents (24¢) or less.

"(2) There are exempted from the taxes imposed by this chapter the receipts from the sale of telephone and telegraph service paid for by inserting coins in coin-operated telephones.

"(W) Transfers Without Substantial Change in Ownership. There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, and the storage, use or other consumption in this State, pursuant to the terms of a good faith bona fide contractual relationship, of an interest in tangible personal property to a partner, co-owner or other person who before or after such a sale owns a joint or undivided interest (with the seller) in such tangible personal property where the Texas Limited Sales, Excise and Use Tax has previously been paid on such tangible personal property.

"(X) Casing, drill pipe, tubing, and other pipe. There are exempted from the taxes imposed by this Chapter, the receipts from the sale, lease, or rental in this State of casing, drill pipe, tubing, and other pipe to be used in exploration for or production of oil, gas, sulphur, and other minerals offshore outside the territorial limits of the state.

"(Y) Property for use in offshore exploration and production. (a) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental in this State of

tangible personal property for use exclusively in the exploration for or the production of oil, gas, sulphur, or other minerals offshore and outside the territorial limits of the State.

"(b) The property described in Subdivision (a) of this section may be delivered to the purchaser or lessee in this State and removed by means of his own facilities or by any other means beyond the territorial limits of the State.

"(c) Receipts from the sale, lease or rental of property described in Subdivision (a) of this section are exempt when the property is shipped to any place in the State for further assembly or fabrication, and receipts from the sale, lease or rental of such property made upon completion of the assembly or fabrication are exempt if the property is forthwith removed beyond the territorial limits of the State."

Sec. 23. Section (B), Article 20.05, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(B) Method Retailer is to Use in Computing Tax. The limited sales tax levied under Article 20.02 shall be computed and paid to the Comptroller on the basis of three percent of all receipts from the total sales of taxable tangible personal property and taxable services sold by the retailer; provided any retailer who can establish to the satisfaction of the Comptroller that fifty per cent (50%) or more of his receipts from the sale of tangible personal property and taxable services arise from individual transactions where the total sales price is twenty-four cents (24¢) or less may exclude the receipts from such sales when reporting and paying the tax imposed by Article 20.02 of this Chapter. No retailer shall avail himself of this provision without prior written approval of the Comptroller. The Comptroller shall grant such approval when he is satisfied that the retailer qualifies on the basis set forth in this Section and when the retailer has submitted satisfactory evidence that he can and will maintain records adequate to substantiate the exclusion herein authorized. Any attempt on the part of any retailer to exercise this provision without prior written approval of the Comptroller shall be deemed to be a

failure and refusal to pay the Limited Sales, Excise and Use Tax and the retailer shall be subject to assessment for back taxes, penalties and interest as provided for in this Chapter."

Sec. 24. Section (J), Article 20.05, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(J) Commingled Tax and Receipts. Any retailer who established an accounting system under which the amount of tax collected pursuant to this Chapter is commingled with the receipts from the sale of tangible personal property or taxable services may determine taxable receipts in the following manner:

"(1) He shall subtract from his total receipts the receipts from any sales which are specifically exempt from or otherwise excluded from the tax imposed by this Chapter. The remainder shall consist of the receipts from the sale of taxable tangible personal property or services plus the tax collected pursuant to the provisions of this Chapter.

"(2) This remainder shall then be divided by 1.02. The answer resulting shall be the taxable gross receipts of the retailer for reporting purposes as prescribed by Section (B) of this Article.

"The sole purpose of this Section is to permit the widest possible latitude in the internal accounting system of retailers and to avoid requiring certain retailers to remit to the State a tax computed upon a base which already includes the tax imposed by this Chapter. Nothing herein shall be construed to relieve the retailer of the obligation and duty of collecting the tax in the specific manner prescribed by Article 20.021 of this Chapter."

Sec. 25. Section (K), Article 20.05, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(K) Direct Payment Procedure Authorized. The Comptroller shall establish a system of direct payment which shall be applicable to those consumers who meet the qualifications set forth in this Section and who, after approval by the Comptroller, are issued a direct payment permit. The

holder of a direct payment permit may issue to all of the vendors or sellers from whom purchases of tangible personal property or taxable services are made a blanket exemption certificate covering all future purchases made by the direct payment permit holder and such certificate shall show the number of the direct payment permit and shall specify that the direct payment permit holder agrees to accrue and pay to the State of Texas all taxes which are or may in the future be due on tangible personal property or taxable services purchased pursuant to exemption certificate.

"(1) Direct payment permits may be issued by the Comptroller after receipt of a written application for such a permit. The application shall be accompanied by:

"(a) Records establishing the fact that the applicant is a responsible person annually purchasing tangible personal property having a value when purchased equal to or in excess of Two Hundred Thousand Dollars (\$200,000) exclusive of any purchase for which a resale certificate authorized by Article 20.021 (F) of this Chapter can be or could have been issued.

"(b) A description, in such detail as the Comptroller may require, of the accounting methods by which the applicant proposes to differentiate between taxable and exempt purchases.

"(c) An agreement, in a form prescribed by the Comptroller and signed by the applicant or, if a corporation, by a responsible officer thereof, under which the applicant agrees to accrue and pay all taxes imposed by Article 20.03 of this Chapter on all purchases not specifically exempted by Article 20.04 of this Chapter. The agreement shall stipulate that the applicant agrees to remit the taxes due quarterly on or before the last day of the month next succeeding each quarterly period. Such agreement shall also stipulate that the applicant agrees to waive any claim for the discount authorized by Article 20.05 (E) of this Chapter on any tax paid by him pursuant to a direct payment permit, provided, however, that if the applicant holds a valid seller's permit issued under the provisions of Article 20.021 (C) of this Chapter he shall continue to be entitled to claim the discounts authorized on sales made pursuant to such seller's permit.

"(2) A direct payment permit shall

be issued to any applicant who meets, to the satisfaction of the Comptroller, the qualifications set forth in Subsection (1) of this Section. The Comptroller shall be the sole judge of whether such qualifications have been met and refusal by the Comptroller to issue a direct payment permit shall not be appealable. Any applicant may, however, request an opportunity to submit an amended application or if denied a direct payment permit, after a reasonable length of time, he may submit a new application.

"(3) Persons holding direct payment permits hold them as a matter of revocable privilege and not as a matter of right and the Comptroller may, upon his own initiative and with reasonable notice, cancel any direct payment permit. A cancellation shall not be appealable. The Comptroller shall notify a direct payment permit holder that his permit has been cancelled by registered mail and, immediately upon receipt of such notification, the direct payment permit holder shall contact all of the vendors or sellers from whom purchases of tangible personal property or taxable services are made and notify them that the exemption certificates issued to them pursuant to the direct payment permit are no longer valid. Failure of a person to so notify the vendors or sellers from whom purchases of tangible personal property or taxable services are made of the cancellation of a direct payment permit shall be considered as a failure and refusal to pay the Limited Sales, Excise and Use Tax by the person required to issue such notices.

"(4) Any direct payment permit holder may voluntarily relinquish such permit by notifying the Comptroller of his desire to relinquish such permit. Such voluntary relinquishment of a direct payment permit shall not be effective until a termination notice is issued by the Comptroller. Immediately upon receipt of the Comptroller's termination notice, the direct payment permit holder shall contact all of the vendors or sellers from whom purchases of tangible personal property or taxable services are made and notify them that the exemption certificates issued to them pursuant to the direct payment permit are no longer valid. Failure of a person to so notify the vendors or sellers from whom purchases of tangible personal property or taxable

services are made of the voluntary relinquishment of a direct payment permit shall be considered as a failure and refusal to pay the Limited Sales, Excise and Use Tax by the person required to issue such notice."

Sec. 26. Section (C), Article 20.11, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(C) Records to be Kept by Sellers, Retailers and Others.

"(1) Every seller, every retailer, and every person storing, using or otherwise consuming in this State tangible personal property purchased from a retailer shall keep such records, receipts, invoices and other pertinent papers in such form as the Comptroller may reasonably require.

"(2) Every such seller, retailer or person shall keep such records for not less than four (4) years from the making of such records unless the Comptroller in writing sooner authorizes their destruction."

Sec. 27. Subsection B, Section 2, Chapter 36, Acts of the 60th Legislature, Regular Session, 1967 (Article 1066c, Vernon's Texas Civil Statutes), is amended to read as follows:

"B. The sales tax portion of any local sales and use tax adopted under this Section is hereby imposed at the rate of one percent (1%) on the receipts from the sale at retail of all tangible personal property and taxable services within any city adopting such tax which property or services is subject to taxation by the State of Texas under the provisions of the Limited Sales, Excise and Use Tax Act, as enacted, and as heretofore or hereafter amended."

Sec. 28. Subdivision (2), Subsection K, Section 2, Chapter 36, Acts of the 60th Legislature, Regular Session, 1967 (Article 1066c, Vernon's Texas Civil Statutes), is amended to read as follows:

"(2) When such Limited Sales, Excise and Use Tax imposed by the State of Texas shall be at the rate of two percent (2%) on the receipts from the sale at retail of all tangible personal property or taxable services within this State which is subject to such tax, and the Local Sales and Use Tax imposed in any city under authority of this Act shall be at the rate of one percent (1%) on the re-

ceipts from the sale of all tangible personal property or taxable services within such city which is subject to such tax, the total gross rate of such combined taxes in such city shall be at the rate of three percent (3%) on the receipts from the sale of all tangible personal property or taxable services within such city which is subject to such taxes. When the sale price shall involve a fraction of a dollar, the taxes shall be added to the sale price upon the following schedule:

Amount of Sale	Tax
\$.01 to \$.16	No Tax
.17 to .49	\$.01
.50 to .83	.02
.84 to 1.16	.03
1.17 to 1.49	.04
1.50 to 1.83	.05

Provided that for successive brackets for this schedule in this paragraph, the tax shall be computed by multiplying four per cent (4%) times the amount of the sale. Any fraction of one cent (\$.01) which is less than one half of one cent (\$.005) of tax shall not be collected. Any fraction of one cent (\$.01) of tax equal to one half of one cent (\$.005) or more shall be collected as a whole cent (\$.01) of tax."

Sec. 29. Section 5, Chapter 36, Acts of the 60th Legislature, Regular Session, 1967 (Article 1066c, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 5. On and after the effective date of any tax imposed under the provisions of this Act, the Comptroller shall perform all functions incident to the administration, collection, enforcement, and operation of the tax, and the Comptroller shall collect, in addition to the Limited Sales, Excise and Use Tax for the State of Texas, an additional tax under the authority of this Act of one percent (1%) on the receipts from the sale at retail or on the sale price or lease or rental price on the storage, use, or other consumption of all tangible personal property or taxable services within such city which property is subject to the State Limited Sales, Excise and Use Tax Act. The tax imposed hereunder and the tax imposed under the Limited Sales, Excise and Use Tax Act shall be collected together and reported upon such forms and under such administrative rules and regulations as may be prescribed by the Comptroller. On and after the

effective date of any proposition to abolish such local sales and use tax in any city, the Comptroller shall comply therewith as provided in this Act."

Sec. 30. Subdivision 1, Subsection B, Section 6, Chapter 36, Acts of the 60th Legislature, Regular Session, 1967 (Article 1066c, Vernon's Texas Civil Statutes), is amended to read as follows:

"B. (1) For the purposes of the local sales tax imposed by this Act, all retail sales, leases and rentals, except sales of natural gas or electricity, are consummated at the place of business of the retailer unless the tangible personal property sold, leased, or rented is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination or the taxable service is to be performed at an out-of-state location. In the event the retailer has no permanent place of business in the State, the place or places at which the retail sales, leases, or rentals are consummated for the purposes of the tax imposed by this Act shall be determined under rules and regulations prescribed by the Comptroller. If the retailer has more than one place of business in this State, the place or places at which retail sales, leases, and rentals are consummated shall be the retailer's place or places where the purchaser or lessee takes possession and removes from the retailer's premises the articles of tangible personal property, or if the retailer delivers the tangible personal property to a point designated by the purchaser or lessee, then the sales, leases, or rentals are consummated at the retailer's place or places of business from which tangible personal property is delivered to the purchaser or lessee. The sale of natural gas or electricity is consummated at the point of delivery to the consumer."

Sec. 31. Subsection C, Section 6, Chapter 36, Acts of the 60th Legislature, Regular Session, 1967 (Article 1066c, Vernon's Texas Civil Statutes), is amended to read as follows:

"C. (1) All exemptions granted to agencies of government, organizations, persons, and to the sale, storage, use, and other consumption of certain articles and items of tangible personal property under the provisions of Article 20.04, Chapter 20, Title 122A, are hereby made applica-

ble to the imposition and collection of the tax imposed by this Act.

"(2) The receipts from the sale, use or rental of and the storage, use or consumption in this state, of tangible personal property are exempt from the tax imposed by this Act, if:

"(a) the property is used for the performance of a written contract entered into prior to the date this Act takes effect in any city which may affect the contract, if the contract is not subject to change or modification by reason of the tax; or

"(b) the property is used pursuant to an obligation of a bid or bids submitted prior to the date this Act takes effect in any city which may affect the contract, if the bid or bids may not be withdrawn, modified or changed by reason of the tax imposed by this Act; and

"(c) if notice of a contract or bid on which an exemption is to be claimed is given by the taxpayer to the Comptroller within sixty days from the date this Act takes effect in any city which may affect the bid or contract.

"The exemption provided by this Subsection shall have no effect after three years from the date this Act takes effect in any city."

Sec. 32. Article 3.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"Art. 3.01. Calculation of Tax

"(1) There is hereby levied an occupation tax on the business or occupation of producing gas within this State, computed as follows:

"A tax shall be paid by each producer on the amount of gas produced and saved within this State equivalent to eight percent (8%) of the market value thereof as and when produced.

"Provided, however, that the amount of the tax on sweet and sour gas shall never be less than 121/1500 of one cent (1¢) per one thousand (1,000) cubic feet.

"(2) In calculating the tax herein levied, there shall be excluded (a) gas injected into the earth in this State, unless sold for such purpose; (b) gas produced from oil wells with oil and lawfully vented or flared; (c) gas used for lifting oil, unless sold for such purposes; and (d) gas used for fuel in field operations in connection with exploring, developing or producing oil or gas where such gas is produced and used in the field, or

on the lease, where produced by the same operator as defined in Article 3.04(15). For purposes of this Article 3.01(2)(d), gas used for field operations shall include, but not be limited to, gas used for drilling, heating, separating, dehydrating, pumping, compressing and generating incident to exploring, developing or producing oil or gas."

Sec. 33. Article 3.04, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, is amended by adding a new Section (15) to read as follows:

"(15) The term 'operator' referred to in Article 3.01(2)(d) means the person actually engaged in exploring for, developing or producing oil or gas either on his own land, on land held by him under lease, or on land in which ownership is divided, for which he is designated operator under a joint operating agreement."

Sec. 34. Chapter 12, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended by adding an Article 12.23 to read as follows:

"Article 12.23. ADDITIONAL FRANCHISE TAX

"(1) In addition to the franchise tax due and payable under Article 12.01 of this Chapter, there is hereby levied on all corporations paying a franchise tax under the provisions of Article 12.01 of this Chapter an additional franchise tax for the privilege of doing business in Texas in corporate form for the period from May 1, 1968, to and including April 30, 1969, and for the periods thereafter beginning each year on May 1, which additional franchise tax shall be computed by multiplying the tax due and payable under Article 12.01 of this Chapter for the aforesaid periods by 22.22 percent.

"(2) Corporations eligible to and electing to compute the franchise tax for which they are liable under the provisions of Article 12.19 of this Chapter shall, for the privilege of doing business in Texas in corporate form for the period from May 1, 1968, to and including April 30, 1969, and for the periods thereafter beginning each year on May 1, pay an additional franchise tax in accordance with the following schedule:

If Total Assets Are at Least	But Less Than	The Addi- tional Tax Shall Be
\$ 0.00	\$20,000.00	\$7.50
20,000.00	40,000.00	12.00

40,000.00	60,000.00	20.00
60,000.00	80,000.00	30.00
80,000.00	90,000.00	40.00
90,000.00	110,000.00	45.00
110,000.00	120,000.00	50.00
120,000.00	130,000.00	55.00
130,000.00	140,000.00	60.00
140,000.00	150,000.00	65.00

"(3) The additional franchise tax levied by this Article for the period from May 1, 1968, to and including April 30, 1969, shall be paid to the State Comptroller of Public Accounts within thirty (30) days after the effective date of this Article. If any corporation fails to pay the additional tax within the prescribed time, the right of such corporation to do business in this state shall be forfeited on December 1, 1968, which forfeiture shall be consummated without judicial ascertainment by the Secretary of State entering upon the margin of the record kept in his office relating to such corporation the words, "right to do business forfeited," and the date of such forfeiture, and provided further that such defaulting corporation shall be subject to the same penalties, liens and conditions as provided in this Chapter.

"(4) The additional franchise tax levied by this Article for each period beginning on May 1, 1969, or on May 1 of a subsequent year, shall be paid at the same time, in the same manner, and subject to the same terms, penalties and conditions as the franchise tax that will become due and payable in the same periods under the provisions of this Chapter.

"(5) The State Comptroller of Public Accounts shall have the right to make and promulgate such rules and regulations and to prescribe such forms as he deems necessary for the efficient and effective administration of the additional franchise tax levied by this Article.

"(6) The additional franchise tax levied by this Article shall be cumulative of all other taxes imposed by this state."

Sec. 35. Article 21.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"Article 21.01. REPORTS REQUIRED

"Every person, firm, association of persons or corporation owning or operating any place of amusement or business which charges a price or fee for admission on which a tax is im-

posed by this Chapter shall file with the Comptroller a quarterly report on the twenty-fifth day of January, April, July and October for the quarter ending on the last day of the preceding month; said report shall show the gross amount received and the price or fee for admission; provided, however, that the report herein required shall be made upon the day following each amusement, exhibition, entertainment or contest, when such amusement, exhibition, entertainment or contest is not held continuously at a regular fixed place or establishment; and further provided, however, no tax shall be levied under this Chapter on any admission collected for dances, moving pictures, operas, plays and musical entertainments all the proceeds of which inure exclusively to the benefit of State, religious, educational or charitable institutions, societies, or organizations, if no part of the net earnings thereof inure to the benefit of any private stockholder or individual, or for any type of exhibition or amusement conducted by and for which all of the net proceeds inure to the benefit of a nonprofit corporation organized and chartered under the laws of the State of Texas, for the purpose of encouraging agriculture by the maintenance of public fairs and exhibitions of livestock, or for admission to any rodeo; and provided further, that an operator of entertainments such as motion pictures, operas, plays and like amusements where the admission charge is less than One Dollar and Five Cents (\$1.05) per person, and where no tax is due hereunder, shall be relieved from the filing of a report and the payment of a tax levied under the provisions of this Chapter. Said person, firm, association of persons, or corporation, at the time of making such report shall pay to the Treasurer of this State a tax in rates and amounts as hereinafter provided."

Sec. 36. Article 21.02, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"Article 21.02. TAX IMPOSED

"(1) There is hereby levied on each admission to entertainments such as motion pictures, operas, plays, concerts, musical shows, skating exhibitions and shows, skating rinks open to skating by patrons, and like amusements, where the admission charged is in excess of One Dollar and Five Cents (\$1.05) and

not more than One Dollar and Fifteen Cents (\$1.15) a tax of one cent (1¢); and where the admission charged is in excess of One Dollar and Fifteen Cents (\$1.15) a tax of two cents (2¢) plus one cent (1¢) on each ten cents (10¢) or fractional part thereof in excess of One Dollar and Twenty-five Cents (\$1.25).

"(2) There is hereby levied a tax of one cent (1¢) on each ten cents (10¢) or each fractional part thereof paid as admission to horse racing, dog racing, motorcycle racing, automobile racing, boat racing, and like mechanical or animal contests and exhibitions.

"(3) There is hereby levied on the amount paid for admission by season ticket, subscription, or lease for admission to any place, a tax equivalent to ten per centum (10%) of the amount paid therefor, provided a single admission to the place would be subject to taxation under the provisions of this Chapter.

"(4) The taxes herein levied shall not apply to complimentary tickets and passes for which no admission charge is collected."

Sec. 37. Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, is amended by adding Chapter 26 to read as follows:

"CHAPTER 26

"ENTERTAINMENT TAX

"Article 26.01. TAX IMPOSED

"(a) There is hereby imposed an entertainment tax at the rate of five percent on receipts collected by any person, except as specifically exempted under this Chapter, which are collected as

"(1) a charge for admission to any sporting event or athletic contest in which the participants are professionals or receive monetary compensation for participating, including baseball, football, basketball, soccer, hockey, rugby, polo, boxing, wrestling, and track and field meets; and

"(2) a charge denominated as an admission charge shall include a cover charge, service charge and any other charge or charges by any other name when made by a dance hall, private club, night-club, bottle club, lounge, cabaret, tavern, dinner club, or dining room when the charge is made for the privilege of any use of the facilities of the person making the charge in order to consume food or beverages, to dance, or to view a floor show or other entertainment; or

"(3) a charge for admission to any natural or man-made phenomena, object or structure or curiosity or interest, such as caverns, amusement parks, buildings, ruins and guided tours of such natural or man-made phenomena, object, structure, curiosity or interest, and shall include charges made for the privilege of participating in or using any of the additional amusements therein or connected therewith.

"(b) 'Receipts' or 'receipts from admission' as used in this chapter means the total consideration received by a taxpayer as defined in Article 26.03 of this chapter, whether the consideration is paid as dues; under the terms of a subscription, membership or other card, season or other ticket, or lease for admission; or without the delivery or use of any receipt, ticket, or other written instrument or device. 'Receipts' or 'receipts from admission' as used in this chapter does not include that portion of the consideration collected as federal excise tax.

"(c) The tax imposed by this chapter is in addition to any other excise tax imposed by the state, any political subdivision of the state, or any city.

"Article 26.02. EXEMPTIONS

"(a) There shall be exempt from the tax imposed by this chapter

"(1) receipts from admissions otherwise taxable if all of the net receipts inure exclusively to the benefit of state, religious, educational, or charitable institutions, societies, or organizations;

"(2) receipts from any rodeo, regardless of whether the participants are amateurs or professional performers.

"(b) For the purpose of the proper administration of this chapter, it shall be presumed that all places of business and all persons who collect receipts or receipts from admission subject to tax under Article 26.01 of this chapter are liable for the tax unless the contrary is established. The burden of proving that receipts are exempt under the provisions of this article is upon the person collecting or receiving the receipts, unless he has obtained from the comptroller an exemption certificate.

"Article 26.03 METHOD OF COLLECTION

"(a) The entertainment tax imposed by this chapter shall be added to the receipts from admission, and

when added, the tax shall become a part of the admission charge. The tax shall be collected by the taxpayer, as herein defined, from the payees of the receipts from admission, and said tax shall be reported and paid to the state by the taxpayer in the manner and at the times provided for herein. The granting of a permit to an owner or operator to collect such taxes for and in behalf of the state shall be deemed to establish a fiduciary relationship between such permit holder and the state.

"(b) Except as hereinafter provided, the tax imposed by this chapter shall be due and payable quarterly at the office of the comptroller at Austin on the twenty-fifth day of January, April, July and October for the quarter ending on the last day of the preceding month.

"(c) Any person, firm, association, or corporation required to obtain a permit in accordance with Article 26.05 of this chapter shall be referred to herein as the taxpayer and shall be subject to the liabilities and responsibilities imposed by this chapter.

"(d) The taxpayer shall deduct and withhold from the taxes otherwise due from him two percent (2%) of such taxes otherwise due or One Thousand Dollars (\$1,000), whichever is the lesser, to reimburse himself for the cost of collecting the tax. In the event the payment of any taxes due under the applicable provisions of this chapter are not paid within the time required, or in the event that the taxpayer does not file reports when due as provided by the provisions of this chapter, the taxpayer forfeits his claim and right to the discount of two percent (2%) or One Thousand Dollars (\$1,000), as the case may be.

"(e) The taxpayer shall pay to the state at the office of the comptroller at Austin the amount of taxes required to be collected under this chapter on the dates on which said taxes are due under the applicable provisions of this chapter. At the same time that the tax herein is payable, the taxpayer shall file with the comptroller at Austin a report on such form as the comptroller shall from time to time prescribe, showing the receipts from admission and the price or charge for each class of admission.

"(f) The tax imposed by this chapter upon the receipts from admission shall be payable on the dates set forth in paragraph (b) of this article, ex-

cept in the case of taxes due on receipts from admission to events or contests not held at a regular fixed place or establishment, in which case the tax shall be payable on the day following the event or contest (excluding Saturdays, Sundays, and legal holidays). However, the taxpayer shall have the right to request an extension of time within which to pay the tax or file such report.

"(g) The comptroller may require returns or payments to be made at times other than provided in this chapter. The comptroller may upon good cause shown extend for a period not to exceed thirty (30) days the time for making returns or payments.

"Article 26.04. RECORDS REQUIRED

"(a) The taxpayer shall make and keep records in Texas at an address shown on the reports to be filed with the comptroller for a period of two years. The records shall correctly reflect (1) the date of the event for which an admission charge was made; (2) the charge for admission; (3) the number of patrons admitted; and (4) if admitted gratuitously, the number of patrons so admitted. The records shall be open to inspection by the comptroller and the attorney general, or their duly authorized agents.

"(b) In addition, for the purpose of enabling the comptroller or his authorized agent to determine the amount of tax collected and payable to the state, or which should have been collected and paid to the state, or to determine whether a tax liability has been incurred, the comptroller or his authorized representative shall have the right to inspect any premises, and any books and records that may be kept incident to the conduct of any business or venture having receipts subject to tax under this chapter, as well as the books and records required to be kept by this chapter.

"(c) For the foregoing purposes, the comptroller or his duly authorized agent shall also have the right to remain upon said premises for such length of time as is necessary to determine fully whether a tax liability has been incurred and the amount thereof. If the taxpayer fails to keep the required records or refuses to allow their inspection, the taxpayer shall forfeit to the State of Texas as a penalty not more than One Thousand Dollars (\$1,000) for each violation, and each violation shall consti-

tute a separate offense. The venue for the collection of such penalties shall be in Travis County, Texas.

"Article 26.05. PERMIT REQUIRED

"(a) From and after the effective date of this chapter, every person, firm, association, or corporation owning or operating, or who desires to own or operate, any place of business or venture which makes a charge for admission shall file with the comptroller a duly acknowledged application for an owner's or operator's permit. The application shall be accompanied by an annual fee of Ten Dollars (\$10) to pay the expenses of administering and enforcing the provisions of this chapter. The permit shall be on the form prescribed by the comptroller. An application shall be filed and a permit obtained for all places of business and ventures charging admission owned or operated by the applicant. The application form shall set forth the name or names under which such owner or operator transacts or intends to transact each business or venture, as well as such owner's or operator's principal office, residence, or place of business in Texas, and if other than an individual, the principal officers of the corporation or the members of the partnership or association, as the case may be, and their office, street, or post office address, as well as such other information as the comptroller may reasonably require. No one shall operate any place of business or venture charging admission until the application has been filed and a permit issued. The permit shall not be assignable. Only one permit shall be required of an owner or operator for all places of business and ventures to be operated. The application for a permit and the permit issued shall designate each location of the place of business or venture to be operated, by street address and town, and the permit may be amended from time to time in order to designate additional locations without the payment of an additional fee. No place of business or venture subject to the tax imposed by this chapter shall be operated unless the location of such place of business or venture is designated on a permit. Each applicant shall be issued a permit for each place of business or venture and shall display the permit conspicuously at the place.

"(b) Upon receipt of the application and the posting of bond required by Article 26.07 of this chapter, the comptroller shall issue to the owner

or operator a nonassignable, consecutively-numbered permit authorizing the operation of a designated place or places of business or ventures charging admission in this state from the date of the issuance of said permit, until and including the following August 31. On or before September 1 of each year, and before any owner or operator shall operate a place of business or venture in this state after August 31 of that year, an application shall be filed, a bond posted, and a permit obtained for the succeeding fiscal year. Said permit shall provide that the same is revocable and shall be cancelled upon violation of any provisions of this chapter. If such permit is cancelled or suspended, said owner or operator shall not operate or allow to be operated any place of business or venture charging admission within the state until a new permit is granted or the original permit is reinstated. However, no permit shall be issued or reinstated where it appears from a duly verified audit made as herein provided by an authorized representative of the comptroller that the applicant is delinquent in the remittance or payment of any tax, penalty, or interest under the provisions of this chapter.

"(c) In the event that a place of business or a venture for which admission is charged is not held at a regular fixed place or establishment, then the owner or operator shall make application for a permit as required in Paragraph (a) of this article within a period of twenty (20) days prior to the date contemplated for the event or contest for which admission is charged is scheduled to begin. The permit shall be effective for a period no longer than the period set forth in the application as being the period during which the event or contest will be held. Such application shall also set forth the location or locations, where the event or contest will be held and the permit shall disclose such location or locations.

"(d) A corporation or organization which is otherwise exempt from the application of this chapter may apply and receive from the comptroller an exemption certificate on a form prescribed by the comptroller upon submission of satisfactory evidence that such corporation or organization is exempt. The application for exemption shall designate the date or dates and place of the activity for which exemption is claimed. Issuance of an exemption certificate shall be pre-

sumptive only of the exempt nature of the activity for which the certificate was issued.

"(e) Upon receipt of an appropriate application for permit and bond, the comptroller shall not refuse to issue a permit because the applicant is contesting in good faith an admission tax otherwise due for a period prior to the effective date of this chapter. However, nothing contained herein shall be construed as meaning that any such tax is forgiven. All admission or entertainment taxes, penalties, and interest accruing to the state by virtue of any of the reenacted or repealed provisions set out in this chapter before the effective date of this chapter shall be and remain valid and binding obligations to the state for all taxes, penalties, and interest accruing under the provisions of all prior laws, and all such taxes, penalties, and interest now or hereafter becoming delinquent to the state are hereby expressly preserved and declared to be legal and valid obligations to the state.

"Article 26.06. CANCELLATION OF PERMIT"

"(a) The comptroller, or any duly authorized agent of the comptroller, is hereby authorized to cancel, or to refuse the issuance, extension, or reinstatement of, any owner's or operator's permit or exemption certificate as provided under the terms of this chapter to any person who has violated or has failed to comply with any of the provisions of this chapter, including any of the following offenses: (1) failure or refusal to remit or pay to the state any excise tax imposed by this chapter, which tax is shown to be owing to the state by a duly verified audit made by a duly authorized agent of the comptroller from any report filed with the comptroller or from any books or reports required to be kept or any books or records authorized to be audited by the provisions of this chapter; (2) failure to file any return or report required under the provisions of this chapter; (3) making and filing with the comptroller of any false or incomplete application, return or report required under the provisions of this chapter; (4) failure to keep any books and records for the period and in the manner required to be kept; (5) falsifying, destroying, mutilating, removing from the state, or secreting any books and records, or any application, return, or report; (6) refusing to permit the comptroller, attorney general, or their

duly authorized agents to inspect, audit, and examine any books and records required to be kept or to inspect any premises they are authorized to inspect; (7) engaging in any business or venture requiring a permit under the provisions of this chapter without obtaining and possessing a valid permit.

"(b) Before any permit or exemption certificate may be cancelled, or the issuance, reinstatement, or extension thereof refused, the comptroller shall give the applicant or permittee not less than fifteen (15) days' notice of a hearing at the office of the comptroller in Austin granting the applicant or permittee an opportunity to show cause before the comptroller, or his duly authorized agent, why such action should not be taken. The notice shall be in writing and may be mailed by United States registered mail to the applicant or permittee at his last known address, or may be delivered to him personally by a duly authorized agent of the comptroller, and no other notice shall be necessary. The comptroller may prescribe rules of procedure and evidence for such hearings.

"(c) In the event that the permit or exemption certificate is cancelled by the comptroller, or his duly authorized agent after such hearing is held or opportunity to be heard has been given, all taxes which have been collected or which have accrued, although said taxes are not then due and payable to the state except by the provisions of this paragraph, shall become due and payable concurrently with the cancellation of the permit, and the permittee shall forthwith make a report covering the period of time not covered by the preceding reports he filed and ending with the date of cancellation, and shall pay to the state all taxes which have accrued under this chapter.

"After being given notice of cancellation, it shall be unlawful for any person to continue to operate a place of business or venture charging admission under the cancelled permit.

"(d) An appeal from any order of the comptroller or his duly authorized agent cancelling or refusing the issuance, extension, or reinstatement of any permit or exemption certificate may be taken to a district court of Travis County by the aggrieved permittee or applicant. The trial shall be de novo under the same rules as ordinary civil suits except that the following exceptions shall be applica-

ble: (1) all appeals shall be perfected and filed within thirty (30) days after the effective date of the order, decision, or ruling of the comptroller or his duly authorized agent; (2) such proceedings shall have precedence over all other causes of a different nature; and (3) the order, decision, or ruling of the comptroller, or his duly authorized agent may for good cause shown be suspended or modified by the court pending a trial on the merits. Any suspension or modification shall not relieve the taxpayer or his surety of their obligations under this chapter or under any bond posted on behalf of such taxpayer.

"Article 26.07. BOND REQUIRED

"(a) Before any permit shall be issued and before engaging in the operation of a place of business or a venture charging admission on which a tax is required to be paid under this chapter every owner or operator shall execute and file with the comptroller a good and sufficient surety bond in the amount of One Thousand Dollars (\$1,000), which shall run concurrently with the permit. The bond shall be signed by the owner or operator and a surety company or companies authorized to do business in this state. The bond shall be payable to the State of Texas and the conditions, and form of the bond shall be prescribed by the comptroller. Each bond shall provide for the performance of all obligations, and the payment at Austin of all taxes due, and all costs, penalties, and interest provided in this chapter; provided, however, that in any event the total of all recoveries under such bond for any and all breaches of its conditions occurring at any time while it remains in force, shall not for any fiscal year exceed the penal sum named therein; provided further, that any such bond, continuous in form, may be, if sufficient and acceptable to the comptroller, continued in effect, by a renewal certificate, and, if so continued in effect, shall be sufficient to support the issuance of any new permit; and provided further, that the said renewal certificate when issued, shall have all the force and effect of the original bond for the fiscal year for which said renewal certificate is issued. After six (6) months from the effective date thereof, the amount of the bond shall be adjusted to a sum equal to no more than two (2) times the highest tax said owner or opera-

tor may be liable to the state for any quarter during the preceding six (6) months, or Ten Thousand Dollars (\$10,000), which ever is the lesser. The comptroller is hereby given the authority, in the appropriate case and upon submission of satisfactory evidence that the revenues will be protected, to reduce the amount of the bond below the maximums provided for herein; provided, however, that the amount of the bond shall never be less than One Hundred Dollars (\$100).

"(b) The comptroller shall have the right, if the amount of any existing bond shall become insufficient, or any surety on a bond shall become unsatisfactory or unacceptable, to require the filing of a new or an additional bond within the maximums provided for herein. When said new bond has been furnished, the comptroller shall cancel the bond for which said new bond is substituted. No recoveries or execution on any new bond may be demanded when any new permit is issued or revived, but no revocation or revival shall affect adversely to the comptroller the validity of any bond. Should any owner or operator fail or refuse to supply a new or additional bond within thirty (30) days after his receipt of notice of the comptroller's demand for a new or additional bond, the owner or operator's permit shall be cancelled by the comptroller.

"(c) Any surety on any bond furnished by any owner or operator under this article shall be discharged from any and all liability to the state accruing on such bond after the expiration of thirty (30) days from the date on which the surety shall have lodged with the comptroller a written request for discharge. Provided, however, that the request shall not operate to release the surety from any liability already accrued, or which shall accrue prior to the expiration of said thirty-day period. The comptroller shall, promptly on the receipt of notice of said request by the surety, notify the owner or operator of the surety's request, and unless such owner or operator shall within thirty (30) days from the date of receipt of said notice file with the comptroller a new bond with a surety duly authorized to do business in this state, in the amount and form required by this article, the comptroller shall proceed to cancel the permit of the owner or operator in the manner provided in

this chapter. If the new bond shall be furnished by said owner or operator as above provided, the comptroller shall cancel the bond for which the new bond is substituted.

"(d) In lieu of giving a bond, any owner or operator may deposit in the suspense account of the state treasury money in the amount of the bond that may be otherwise required by the terms of this article which shall not be released until a bond is executed in lieu thereof, or until the comptroller has made an audit of the owner or operator's records and authorized the same released.

"(e) Suit may be filed against any surety on any bond, without first resorting to or exhausting the assets of the owner or operator, or without making the owner or operator, as principal obligor in said bond, a party to the suit.

"Article 26.08. PENALTIES.

"(a) If any taxpayer fails to pay the tax or file a report as required by this chapter when the same shall be due, he shall forfeit five percent (5%) of the amount of tax due as a penalty, and after the first thirty (30) days, he shall forfeit an additional five percent (5%) of the tax. Provided, however, that the penalty shall never be less than One Dollar (\$1). Delinquent taxes and accrued penalty shall draw interest at the rate of six percent (6%) per annum beginning sixty (60) days from the date due. Venue for the collection of penalties shall be in Travis County.

"(b) All taxes, penalties, and cost of auditing, as provided for herein, due, or that might become due by any taxpayer to the state, shall be and become a preferred lien, first and prior to all other existing liens, contract or statutory, legal or equitable, and regardless of the time of the lien originated upon all the property devoted to or used in the business or venture of the taxpayer charging admission, which property includes land, buildings, fixtures, equipment, trucks, cars, or other motor vehicles, or any other equipment used in carrying on such business or venture. The Attorney General of the State of Texas may file suit for the collection of taxes, penalty and interest and for the foreclosure of the lien herein provided in any court of competent jurisdiction in Travis County, Texas. If any person, firm, corporation, or association of persons are alleged to be liable for any tax imposed by this

chapter and who fails or refuses to pay such tax and it becomes necessary to file suit or intervene in any manner for the establishment or collection of said taxes, claims or penalties, a claim showing the amount of the tax due the state certified to by the comptroller of public accounts or his chief clerk shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided, however, that the incorrectness of said claim may be shown.

"The lien provided for herein shall not be valid or effective against any mortgagee, holder of a deed of trust, purchaser, pledgee, or judgment creditor acquiring title, lien, or other right or interest in the property covered by the lien provided for herein more than twelve (12) months immediately preceding the filing or recording of notice of the lien provided for herein.

"(c) Any taxpayer required to file a report or keep records as provided in this chapter, who fails or refuses to file the report on the dates provided in this chapter, or make and keep such records, or who violates any other provision of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100) and the fine is in addition to the civil penalties provided in Article 26.08 of this chapter. The venue for prosecutions under this paragraph shall be in Travis County.

"Article 26.09. RESTRAINING ORDERS AND INJUNCTIONS

"Any owner or operator of a place of business or venture charging admission who does not have an exemption certificate issued by the comptroller as provided for in this chapter, and who fails to obtain a permit and post bond in accordance with the provisions of this chapter, may be restrained or enjoined by court order from operating the place of business or venture without a permit and bond, or, if the owner or operator is entitled to an exemption certificate, without having a certificate. Suits for any restraining order or injunction shall be filed by the attorney general in a court of competent jurisdiction in Travis County. In the event that the owner or operator has already commenced the business or venture, then the attorney general may seek in his suit any taxes due under this

chapter from the owner or operator as additional relief.

"This article shall be cumulative of and in addition to any other provisions of law authorizing any kind of injunctive relief.

"Article 26.10. PROMULGATION OF RULES AND REGULATIONS BY COMPTROLLER

"The comptroller is vested with authority to promulgate rules and regulations, not inconsistent with this chapter, to enforce the provisions of this chapter and to facilitate the collection of taxes imposed."

Sec. 38. Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, is amended by adding a new Chapter 31 to read as follows:

"CHAPTER 31

"SOFT DRINK EXCISE TAX

"Article 31.01. TITLE; DEFINITIONS

"This Chapter is known and may be cited as the 'Soft Drink Excise Tax Act,' and the following words shall have the following meanings unless a different meaning clearly appears from the context:

"(A) 'Bottled soft drinks' shall include any and all nonalcoholic beverages of whatsoever kind or description, whether carbonated or not, and whether manufactured with or without the use of syrup or flavoring, when such beverages are sold in bottles or are prepared for sale or use in bottles, such as soda water, ginger ale, Delaware Punch, Nu-Grape, Coca-Cola, Seven-Up, Pepsi-Cola, Dr. Pepper, Seven-Up, root beer, orangeade, lemonade, fruit juice when any plain or carbonated water, flavoring, or syrup is added, milk drinks when mixed with flavoring or syrup, soft cider, cordials, or any and all preparations, commonly referred to as 'soft drinks' of whatever kind which are closed and sealed in glass, paper, or any other type of container or bottle, whether manufactured with or without the use of any syrup. The term 'bottled soft drinks' shall not include fluid milk to which no flavoring has been added, or natural, undiluted fruit juice or vegetable juice.

"(B) 'Syrup or syrups' shall mean and include any mixture or basic ingredient used in the making, mixing, blending, or compounding of soft drinks at soda fountains, vending machines, or similar places by mixing such ingredients with carbonated or

plain water, ice, fruit, milk, or any other product mixed or prepared for use in making soft drinks, such as Coca-Cola syrup, Dr. Pepper syrup, Chere-Cola syrup, lemon syrup, vanilla syrup, chocolate syrup, strawberry syrup, cherry syrup, rock candy syrup, Nu-Grape syrup, simple syrup, or any other prepared syrups sold or used for the purpose of mixing soft drinks at soda fountains, vending machines, or similar places. Simple syrup is further defined to mean any syrup made, mixed, blended, compounded, or manufactured by dissolving sugar and water or any other mixture that would create what is commonly referred to as simple syrup for use at soda fountains, vending machines, or similar places.

"(C) 'Stamp' shall mean the stamp or stamps printed, manufactured, or made by authority of the Board of Control and issued, sold, or circulated by the treasurer and by the use of which the tax levied hereunder is paid.

"(D) 'Crown' shall mean the crown or crowns made or manufactured by authority of the Board of Control and issued, sold, or circulated by the treasurer and by use of which the tax levied hereunder is paid.

"(E) 'Counterfeit stamp or crown' shall mean any crown, stamp, label, print, tag, or token which evidences or purports to evidence the payment of any tax levied by this chapter and which crown, stamp, label, print, tag, or token has not been printed, manufactured, or made by authority of the Board of Control and/or issued, sold, or circulated by the treasurer.

"(F) 'Person' shall mean and include individuals, firms, associations, joint stock companies, syndicates, co-partnerships, corporations, trustees, agencies, or receivers.

"(G) 'Dealers' shall mean and include every person in this state who refines, manufactures, makes, prepares, produces, mixes, blends, or compounds syrups or other compound mixtures or basic ingredients to be used in making, mixing, or compounding soft drinks at soda fountains, vending machines, or similar places, or any person who bottles or otherwise prepares ready for consumption any soft drink containing any of the foregoing products, preparations, or mixtures for distribution, sale, use, or consumption within this state; the term 'dealer' shall also include any

person who ships, transports, imports, or brings into this state any bottled soft drink or soft drink syrup as herein defined for distribution, sale, use, or consumption in the State of Texas. Any person who has in his possession any bottled soft drinks or soft drink syrups as herein defined who cannot show that the tax imposed by this chapter has been previously paid shall also be considered and is hereby defined as a 'dealer.'

"(H) 'Wholesale dealer' shall mean and include every person who distributes or sells any bottled soft drinks or soft drink syrup as herein defined for the purpose of resale.

"(I) 'Retail dealer' shall mean and include every person other than a wholesale dealer as herein defined who shall sell, distribute, or offer for sale or distribution to consumers any of the products on which the tax is levied by this chapter irrespective of quantity or amount or the number of sales.

"(J) 'Comptroller' shall mean the Comptroller of Public Accounts of the State of Texas.

"(K) 'Treasurer' shall mean the Treasurer of the State of Texas.

"Article 31.02. TAX IMPOSED

"In addition to all taxes now levied by the State of Texas, there is hereby imposed an excise tax on the sale, use, consumption, handling, or distribution within the State of Texas of all bottled soft drinks and all soft drink syrups as defined in the chapter. A person manufacturing or producing within this state any bottled soft drinks or soft drink syrup for sale within this state shall pay the tax imposed by this chapter; and the distributor, wholesale dealer, or retail dealer or any other person in this state who is the original consignee of any bottled soft drink or soft drink syrup manufactured or produced outside this state and shipped into this state, or who brings such drinks or syrups into this state, shall pay the tax. The tax imposed by this chapter shall be paid by the dealer who first distributes, sells, uses, consumes, or handles the same in this state, but any person who acquires in any manner any of the products subject to the tax on which the tax has not been paid is jointly and severally liable for the tax. The tax may not be collected more than once in respect to the same bottled soft drinks or soft drink syrup manufactured, sold, used,

or distributed in this state. The tax shall be levied at the following rates:

"(a) On each bottled soft drink a tax of one cent (1¢) on each sixteen (16) fluid ounces, or fraction thereof, contained therein.

"(b) On each gallon of syrup, a tax of eighty cents (80¢), and in like ratio on each part gallon thereof, and on each ounce of dry mixture used for making soft drinks, a tax proportionate to that levied on soft drink syrup, in a ratio to be determined by the comptroller.

"Article 31.03. TAX STAMP OR CROWN REQUIRED

"Every dealer is required to affix a tax stamp or crown to the container of each bottled soft drink or soft drink syrup before that product is distributed, sold, used, or consumed in this state; provided, however, that a retail dealer who imports, manufactures, mixes, compounds, or otherwise prepares a product taxed herein, is required to affix the requisite amount of tax stamp to the container immediately after the product is received, manufactured, or compounded at his retail place of business and the possession of any taxable product in any retail place of business without proper stamps affixed to the container is prima facie evidence that the products are possessed for the purpose of evading payment of the tax. 'Retail place of business' shall be construed to mean any place of business where taxable products are sold or offered for sale to consumers and not for the purpose of resale.

"Article 31.04. AUTHORITY OF COMPTROLLER RE STAMPS AND CROWNS

"(A) The comptroller is authorized to have manufactured or printed in whatever quantities and denominations he considers necessary to the enforcement of the tax imposed by this chapter, tax stamps and tax crowns, to evidence the payment of the tax. The tax stamps and tax crowns shall be of a design selected by the comptroller and so manufactured that the tax stamps may be easily affixed to containers and the tax crowns may be used to seal all bottled soft drinks. The comptroller may adopt any method of identification of the crowns or stamps that he may choose; he may also change the design of the stamps or crowns as often as he may deem changes neces-

sary to the best enforcement of the tax imposed by this chapter; provided that in the case of any change the treasurer is hereby required to redeem at face value any stamps or crowns lawfully issued prior to the change. Provided, also, that in case of such a change the person holding stamps or crowns of the old design shall be required to send them to the treasurer for exchange at face value for crowns or stamps of the new design within sixty (60) days of the date of issue of the stamps or crowns of the new design; it shall be unlawful for any person to have in his possession after said sixty-day period stamps or crowns of the old design, or to sell, offer for sale, or possess for the purpose of sale, bottled soft drinks or soft drink syrups to which stamps or crowns of the old design are attached; violations shall be punished as hereafter set forth. After sixty (60) days from the date of the issue of the new design, bottled soft drinks and soft drink syrups to which stamps or crowns of the old design are attached shall, for the purpose of enforcement of this chapter, be considered as bottled soft drinks or soft drink syrups without stamps or crowns affixed thereto. It shall be the duty of the treasurer upon receipt of any new design of stamps or crowns authorized to be printed or manufactured by the comptroller to designate the date of issue of such new design by the issuance of a proclamation, and the date of such proclamation shall be the date of issue of the new design of stamps.

"(B) The printing or manufacturing of stamps or crowns shall be awarded to the person submitting the lowest and best bid that will afford the greatest and best protection to the state in the enforcement of the provisions of this chapter. The tax stamps and tax crowns shall be sold only by the treasurer of this state except as hereinafter provided. The comptroller may, if any person is found in possession of taxable products without stamps or crowns affixed, require said person to purchase stamps or crowns upon a requisition to be issued by the comptroller from any dealer in order that said person may be required to affix the proper stamps or crowns in the presence and under the direction of the comptroller. The requisition shall be issued in triplicate, the original kept by the comptroller, and the duplicate and

triplicate delivered to the purchaser and seller of the stamps or crowns.

"(C) The treasurer shall invoice the stamps or crowns ordered from him upon a form invoice to be consecutively numbered and printed in triplicate. The original invoice shall be delivered with the stamps or crowns ordered, the duplicate shall be delivered to the comptroller, and the triplicate kept by the treasurer. The treasurer is hereby empowered to promulgate rules and regulations to provide for refunds and exchanges made on stamps or crowns purchased from him; provided, however, that a complete record shall be kept of all such refunds and exchanges. The comptroller is hereby authorized to promulgate rules and regulations for the administration and enforcement of the provisions of this chapter. The comptroller shall have printed the necessary permit forms, report forms, requisition forms and other forms or printed matter necessary to the enforcement of this chapter.

"Article 31.05. PERMIT REQUIRED

"(A) Every person in this state now engaged or who desires to become engaged in the distribution or sale of any of the products taxed under the provisions of this chapter shall, within thirty (30) days from the date this chapter becomes effective, make application to and obtain from the comptroller a permit authorizing him to distribute or sell any of the taxable products. The application must be accompanied by a fee of Twenty Dollars (\$20) if for a wholesale dealer's permit or a fee of Ten Dollars (\$10) if for a retail dealer's permit. The comptroller shall prescribe the information to be furnished on the application forms. The permit shall expire twelve (12) months from its issuance date, but may be renewed upon like application and upon payment of another fee in the amount prescribed for the kind of permit desired.

"(B) A separate permit must be obtained for each place of business owned or operated by any person. 'Place of business' as used in this chapter shall be construed to mean and include any place where any of the products taxed under the provisions of this chapter are refined, manufactured, produced, made, prepared, distributed, sold, stored, or kept for the purpose of distribution, sale,

or consumption; or if distributed or sold from any vehicle or train, the vehicle or train on which or from which such products are sold shall constitute a place of business. If the place of business of any dealer is a vehicle or train, the dealer is required to designate in the application for a permit a permanent place where the records required to be kept for such place of business will be available to the comptroller after the products are delivered from the vehicle or train, and after such deliveries are made, the records shall be kept at the permanent place so designated.

"(C) A separate permit is required for each kind of business for any person doing both a wholesale and retail business.

"(D) All permits are revocable and shall be forfeited or suspended upon any violation of any provision of this chapter or any reasonable rule or regulation promulgated by the comptroller. If any permit is revoked or suspended, the permittee may not sell any products taxed under the provisions of this chapter from the place of business for which the permit was issued until a new permit is granted or suspension of the old permit is removed. Provided, further, that the treasurer may refuse to sell tax stamps or crowns to any person who has not obtained a permit or to any person whose permit has been revoked or suspended until the permit has been reinstated or a new permit issued. The permit must at all times be publicly displayed by the permittee at each place of business so as to be easily seen by the public and persons authorized to inspect the same. The permit is nonassignable and shall be consecutively numbered.

"(E) The comptroller, after notice of at least five (5) days and opportunity to be heard under regulations to be made by him, shall have jurisdiction, power, and authority to revoke the permit of any dealer for violation of any provision of this chapter, or for willful or persistent violations of the rules and regulations promulgated by him. No new permit may be issued to anyone whose permit has been revoked until at least one (1) year after the revocation.

"Article 31.06. RECORDS

"(A) Unless otherwise provided in this chapter, each wholesale dealer shall keep at each place of business in Texas a complete record of all bot-

tled soft drinks and all soft drink syrups purchased, received, distributed, sold, used, consumed, or otherwise disposed of by said wholesale dealer; the record shall be kept in a well-bound book and shall show the date the products were received, the name and address from whom purchased, and from whom received, the point from which shipped or delivered, the name of the carrier, the amount, kind, and quantity of all such products distributed or sold, and the name and complete address of the purchaser; the book shall at all times be open to inspection by the comptroller or the attorney general or their authorized representatives, employees, or agents. The record shall also show a complete inventory as of the first of each month of the kind and quantity of all such products on hand. Provided, further, that each wholesale dealer shall keep a complete record of all tax stamps and crowns purchased or received and all tax stamps or crowns used, lost, stolen, or otherwise disposed of, together with an inventory as of the first of the month showing the number, denomination, and face value of all tax stamps and crowns on hand.

"(B) Provided, further, that each wholesale dealer shall issue an invoice in duplicate, with each sale or distribution of bottled soft drinks or soft drink syrups as herein defined, which invoice shall show the date of the sale or distribution, the purchaser and his address, the means of delivery, and the quantity and kind of such products sold. The original of the invoice shall be delivered to the purchaser and the duplicate shall be kept by the wholesale dealer; provided that when bottled soft drinks or soft drink syrups as defined in this chapter are distributed or exchanged in any manner where no sale is involved, an explanation of such transaction shall be stated on said invoice. Provided, further, that if a wholesale dealer sells bottled soft drinks or soft drink syrup at both wholesale and retail, he is required to issue an invoice to his retail department for the quantity of products to be sold at retail and such stock of said products invoiced for retail sales shall be kept separate and apart from the other stock of the wholesale dealer.

"(C) Provided, further, that every person engaged in the business of selling bottled soft drinks or soft

drink syrups in interstate commerce is required to keep the same record and make the same reports to the comptroller that are required of a wholesale dealer.

"(D) Every retail dealer shall keep a well-bound book at each place of business in Texas, except as otherwise provided, for a period of two (2) years, for inspection at any time by the comptroller or attorney general, a complete record of all bottled soft drinks or soft drink syrups purchased, received, manufactured, mixed, blended, or compounded by said retail dealer, showing the date the products were received, the name and address from whom purchased or from whom received, the point from which shipped or delivered, the name of the carrier, and the quantity and kind of products received, manufactured, mixed, blended, compounded, or purchased. Provided, however, the retail dealer may, in lieu of entering in the book record the foregoing information showing bottled soft drinks and soft drink syrups purchased from licensed wholesalers, file the invoices received from the wholesale dealer showing the receipt of the products.

"Article 31.07. TAXES AND PENALTIES CONSTITUTE PRIOR LIEN

"All taxes, penalties and cost of auditing, as herein provided, due or that might become due by any dealer to the state shall be and become a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such lien originated, upon all the property of any dealer, devoted to or used in his business as a dealer, including building, equipment, stock, fixtures, cash, and other tangible property which is used in carrying on that business. If any dealer fails to pay any taxes and penalties due the state, the comptroller may employ auditors or investigators to ascertain the correct amount due, and if such taxes have not been properly paid the dealer shall pay the reasonable expenses incurred in the investigation and audit as additional penalty. All funds paid to the auditors of the comptroller as expenses incurred in making audits shall be placed in the General Revenue Fund of the State.

"Article 31.08. PAYMENT OF TAX

"(A) Every wholesale dealer shall make and deliver to the comptroller in Austin, Travis County, Texas, on the 10th day of each month a report for the preceding calendar month, which

report shall be properly executed by the wholesale dealer, or his representative in charge, and which shall show the date the report was executed, the name and address of the wholesale dealer, the month which the report covers, the quantity of each kind of bottled soft drink and soft drink syrup on hand at the beginning of the month, the quantity and kind of all such products purchased and received during the month, the quantity and kind of all such products distributed, sold, used, consumed, lost, stolen, returned to the factory, or disposed of in any other manner, and the quantity and kind of each such product on hand at the end of the month. Said report shall show the foregoing information separately as to stamped products and unstamped products. The report shall also show separately the quantity and kind of products sold or distributed in intrastate commerce and the quantity and kind of products sold or distributed in interstate commerce. Said report shall also show the number, denomination, and face value of unused stamps and crowns on hand at the beginning of the month covered in the report, the number, denomination, and face value of stamps and crowns purchased or received, the number, denomination, and face value of stamps and crowns used, lost, stolen, exchanged, returned to the treasurer, sold upon requisition from the comptroller, or disposed of in any other manner, and the number, denomination and face value of stamps and crowns on hand at the end of the month covered by the report. Provided, further, that the comptroller may prepare and furnish a form prescribing the order in which the information required shall be set up in the report, but the failure of a dealer to obtain such form from the comptroller is no excuse for failure to file the report containing all the information required by this chapter to be reported. Provided, further, that every dealer or other person who receives bottled soft drinks or soft drink syrup from outside the state or who manufactures, makes, produces or prepares any such products for distribution, sale, use, or consumption, is required to keep the same records and make the same reports to the comptroller monthly that are required of a wholesale dealer.

“(B) If any dealer or other person fails to pay any tax, penalty, or cost of audit due the state and it becomes necessary to bring suit or to intervene

in any manner for the establishment or collection of the tax claim, in any judicial proceedings, any report filed with the comptroller by that dealer or other person or his representatives, or a certified copy thereof certified to by the comptroller or his chief clerk, showing the quantity and kind of bottled soft drinks and soft drink syrup sold by that dealer or other person or his representatives, upon which such tax, penalty and cost of audit has not been paid, or any audit made by the comptroller or his representatives when signed and sworn to by the comptroller or his representative as being made from the records of any dealer or other person or from the records of persons from whom or to whom that dealer or other person has bought, received, or delivered such taxable products, whether from the records of a transportation company or other persons handling such taxable products in any manner, is admissible in evidence in such proceedings and is prima facie evidence of the contents thereof and the burden of proof shall be upon the dealer or other person to show that any such audit or report or any part of such audit or report is incorrect. The comptroller may file any suit, injunction, or other proceeding in law or in equity available for the establishment or collection of any claim for delinquent taxes, penalty, or cost of audit accruing under the provisions of this chapter, or the enforcement of the terms and provisions of this chapter in a court of competent jurisdiction in Travis County, Texas, or any county where the person owing the tax has a residence or place of business.

“(C) Provided that if any audit or tax claim which has been signed and sworn to by the comptroller or his representative in the manner provided in the foregoing subsection, shows that bottled soft drinks or soft drink syrups have been delivered to any dealer or other person or have been received by any dealer or other person, then unless that dealer or other person can furnish evidence to the comptroller that sufficient tax stamps or crowns have been purchased to cover the tax imposed on said products or that the products had the proper and requisite amount or number of tax stamps or crowns affixed when received, the audit or tax claim shall be taken as prima facie evidence that such taxable products were sold in Texas without stamps or

crowns affixed and without the tax levied under the provisions of this chapter having been paid to the state.

"Article 31.09. AFFIXING OF TAX STAMP OR CROWNS REQUIRED

"(A) Every dealer as defined in this chapter shall, before receiving or accepting delivery of any of the products taxed under the provisions of this chapter, or before refining, manufacturing, making, producing, preparing or acquiring in any other manner, any of those products, obtain from the treasury or have in his possession the requisite amount or quantity of tax stamps or tax crowns necessary to stamp or seal such taxable products and the possession of any of those products without the possession of the requisite amount or quantity of stamps or crowns shall be prima facie evidence that said taxable products are possessed for the purpose of distributing, selling, using or consuming the same without payment of the required tax. Every dealer shall cause all products taxed under the provisions of this chapter to have the proper stamps or crowns affixed immediately but any dealer who has in his possession the requisite amount or quantity of stamps or crowns necessary to stamp or seal all the products subject to the tax which are in his possession may hold those products for a period of not longer than forty-eight (48) hours, excluding Sundays and legal holidays, before affixing the stamps or crowns as required by this chapter.

"(B) Provided, however, that any dealer may execute and file with the comptroller an acceptable surety bond signed by the dealer and a good and sufficient surety company authorized to do business in this state which bond when approved by the comptroller shall authorize him to store any products taxed under the provisions of this chapter without processing or affixing tax stamps or tax crowns until those products are ready for sale or distribution. The bond must be in an amount which is not less than Two Hundred and Fifty Dollars (\$250) nor more than twice the amount necessary to stamp or seal the largest quantity of taxable products that will be stored at any time by that dealer, and any quantity of taxable products so stored which is larger than that permitted by the bond is subject to the same requirements and penalties as taxable prod-

ucts possessed without a bond. The comptroller may require an additional or a new bond at any time such bond or the sureties thereon become unsatisfactory, and if the new or additional bond is not supplied within ten (10) days after request is made the comptroller shall automatically cancel any existing bond. The bond required by this article shall be payable to the State of Texas and shall guarantee the state against any and all losses for taxes, penalties and audit costs imposed by the provisions of this article.

"Article 31.10 INSPECTIONS

"For the purpose of enabling the comptroller to determine the tax liability of any dealer or any other person dealing in the products taxed under the provisions of this chapter or to determine whether a tax liability has been incurred, he has the right to inspect any premises where the taxable products are manufactured, produced, made, prepared, stored, transported, sold, or offered for sale or exchange and to examine all records required to be kept or any other record that may be kept incident to the conduct of the business of a dealer or other person dealing in the products taxed. He also has the right as an incident to determining tax liability, or whether a tax liability has been incurred, to examine all stocks of products taxed under the provisions of this chapter, and for the foregoing purposes he has the right to remain upon the premises for the length of time necessary to fully determine the tax liability, or whether a tax liability has been incurred, and it is unlawful for any dealer or other person to fail to produce upon demand by the comptroller any records required by this chapter to be kept or to hinder or prevent in any manner the inspection of the records or products or the examination of his premises.

"Article 31.11. RECORDS REQUIRED OF COMMON CARRIERS

"Every common and contract carrier transporting any products taxed under the provisions of this chapter in this state, whether in intrastate or interstate commerce, shall keep a complete record in Texas of all those products so transported or handled, which record shall show separately for each transaction the name of the consignor and consignee, the date of delivery, and the quantity or amount of the products transported or handled; the record, together with all

other books or records in the custody of a carrier showing shipments of taxable products shall be open to inspection at all times by the comptroller, attorney general, or their authorized representatives, and common and contract carriers shall give and permit those authorities free access to all books and records and all taxable products in the custody of the carriers.

"Article 31.12. PENALTY

"If any dealer or other person fails to comply with any provision of this chapter or violates any provision of this chapter, or if any dealer or other person fails to comply with any rule or regulation promulgated by the comptroller or violates any rule or regulation promulgated by the comptroller, he shall forfeit to the state as a penalty, the sum of not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500). Each day's violation constitutes a separate offense and incurs a separate penalty, and the attorney general of Texas shall file suit to recover such penalties and may enjoin the operation of any business conducted by that dealer and subject to the provisions of this chapter until such tax is paid.

"Article 31.13. FORFEITURES

"(A) All bottled soft drinks or soft drink syrups on which taxes are imposed by this chapter found in the possession, or custody, or within the control of any person, for the purpose of being sold or removed by him in fraud of this chapter, and all bottled soft drinks and soft drink syrups which are removed or deposited or concealed in any place with intent to avoid payment of taxes levied by this chapter, and any automobile, truck, boat, conveyance, or other vehicle whatsoever, used in the removal or transportation of such bottled soft drinks and soft drink syrups for such purposes, and all equipment, paraphernalia or other tangible personal property incident to and used for such purpose, found in the place, building, or vehicle where such bottled soft drinks or soft drink syrups are found, may be seized by the comptroller, with or without process, and the same shall be from the time of such seizure forfeited to the State of Texas, and a proceeding in the nature of a proceeding in rem shall be filed in a court of competent jurisdiction in the county of seizure to maintain such seizure and declare and perfect the forfeiture

as hereinafter provided. All such bottled soft drinks or soft drink syrup vehicles and property so seized and remaining in the possession or custody of the comptroller, sheriff, or other officer for forfeiture or other disposition as provided by law, shall be deemed to be in the custody of law and irrepleviable.

"(B) The comptroller, when making the seizure provided for in this article, shall immediately make a written report showing the name of the agent or representative making the seizure, the place and person where and from whom the property was seized, and an inventory and appraisalment of the property at the usual and ordinary retail price of the articles seized, which report shall be prepared in duplicate and signed by the agent or representative seizing the property. The original of the report shall be given by the comptroller to the person from whom the property is taken, and a duplicate shall be filed in the office of the comptroller and shall be open to public inspection.

"(C) The attorney general, or the district or county attorney of the county of seizure, shall, at the request of the comptroller, file in a court of competent jurisdiction in Travis County, Texas, or any county where the person owing the tax may be a resident or have a place of business, forfeiture proceedings in the name of the State of Texas as plaintiff, and in the name of the owner or person in possession as defendant, if known, and if unknown, then in the name of the property seized and sought to be forfeited. Upon the filing of the proceeding, the clerk of the court shall issue notice to the owner or person in possession of the property to appear before the court upon the date stated in the notice, which shall be not less than two (2) days from service of the notice, to show cause why the forfeiture should not be declared. The notice shall be served by the sheriff of the county. In the event the defendant in the proceeding is a nonresident of the state or his residence is unknown, or in the event the name of the defendant is unknown, upon affidavit by the comptroller to this effect, notice or process shall be served or published in the mode and manner provided by existing statutes for service of citation upon nonresidents or unknown defendants, provided, however, such proceeding may be heard at any time after ten (10) days from service of

process or the first publication of notice. In such cases, the court shall appoint an attorney to represent the defendant. The attorney shall have the rights, duties, and compensation provided by existing statutes in cases of attorneys appointed to represent nonresidents and unknown defendants.

"(D) In the event final judgment is rendered in the forfeiture proceeding maintaining the seizure, and declaring and perfecting the forfeiture of the seized property, the court shall order and decree the sale of the property to the highest bidder by the sheriff at public auction in the county of seizure, after ten (10) days notice by advertisement at least twice in any legal publication of that county, and the proceeds of the sale, less expenses of seizure and court costs, shall be paid into the state treasury and shall be allocated as the tax on bottled soft drinks and soft drink syrups is allocated in this chapter. In the event a district or county attorney files and prosecutes a forfeiture case, a fee of Fifteen Dollars (\$15) shall be paid to him in addition to all other fees allowed by law under any maximum fee bill. The fee shall be collected as court costs out of the proceeds of the sale.

"(E) In lieu of the forfeiture proceeding provided in this article, the comptroller may elect to sell the bottled soft drinks and soft drink syrups and property seized by him in cases where the property appears by the report or receipt of the officer seizing it to be of the appraised value of Five Hundred Dollars (\$500), or less, by the following summary proceedings:

"(1) The comptroller shall publish a notice in some newspaper of the county where the seizure was made, describing the property seized and stating the time, place, and cause of the seizure, and requiring any person claiming the property, or any interest in the property, to appear and make such claim within fifteen (15) days from the date of publication of the notice.

"(2) Any person claiming the property so seized, or any interest in the property, may within 15 days of date of the notice, file with the comptroller his claim, stating his interest in the property seized, and may execute a bond to the State of Texas in the penal sum of Two Hundred and Fifty Dollars (\$250), with sureties to be approved by the comptroller, conditioned that, in case of the establishment of forfeiture of the articles

seized, the obligors will pay all the costs and expenses of the proceeding to obtain such forfeiture; and upon the delivery of such bond to the comptroller, he shall transmit it with a certified copy of the report or receipt of the property seized, filed in his office, to the attorney general or the county or district attorney of the county of seizure, and forfeiture proceedings shall be instituted and prosecuted thereon in the court of competent jurisdiction as provided by law.

"(3) If no claim is interposed and no bond is given within the time specified, the comptroller shall give ten (10) days notice of a sale of the property under seizure by publication two (2) times in a newspaper of the county of seizure, and, at the time and place specified in the notice, shall sell the property seized at public auction, and, after deducting expense of seizure, appraisement, custody, and sale, he shall deposit the proceeds of the sale in the state treasury to the credit of the General Revenue Fund.

"(F) In the event that bottled soft drinks and soft drink syrups seized under this article and sought to be sold upon forfeiture, summary, or other process provided by law do not have tax stamps or tax crowns affixed thereto, the officers selling them shall, upon sale thereof, affix or cause to be affixed, the tax stamps or tax crowns required and deduct the expense from the proceeds of the sale.

"(G) The seizure, forfeiture, and sale of bottled soft drinks and soft drink syrup and other property under the terms and conditions set out in this article, whether with or without court action, shall not be or constitute any defense or exemption to the person owning or having control or possession of the property from criminal prosecution for any act or omission made or offense committed under this chapter or from liability to pay penalties provided by this chapter, with or without suit.

"Article 31.14. WAIVER OF FORFEITURE

"Authority is hereby conferred upon the comptroller to waive any proceedings for the forfeiture of any of the property seized under any provision of this chapter, providing that the offender shall first affix to each of the individual bottles or containers of soft drinks or soft drink syrup seized the amount and value of the tax stamps and tax crowns necessary to represent the tax, and in addition

to the tax stamps and tax crowns required, pay into the state treasury through the comptroller a sum equal to the value of the tax stamps and crowns required to be affixed to such bottled soft drinks and soft drink syrup. The comptroller may exercise this waiver before or after any claim is filed in court. A record of all waivers of forfeiture shall be kept by the comptroller and shall be open to public inspection.

"Article 31.15. OTHER TAXES ON SOFT DRINKS AND SOFT DRINK SYRUP PROHIBITED

"The tax herein levied is in lieu of any other occupation or excise tax levied by the state or any political subdivision of the state on bottled soft drinks or soft drink syrup.

"Article 31.16. ENFORCEMENT POWERS GRANTED COMPTROLLER

"The comptroller is hereby authorized, ordered, and directed to collect the tax levied under the provisions of this chapter and to employ all the agencies of the law available to him for the enforcement of the provisions of this chapter and to make necessary rules and regulations for the administration and enforcement of this chapter.

"Article 31.17. ADDITIONAL PENALTIES

"A person who (a) distributes, sells, or offers for sale any bottled soft drink or soft drink syrup without the proper tax stamp or tax crown being affixed to each individual container, or (b) distributes or gives away any bottled soft drink or soft drink syrup without the proper tax stamp or tax crown being affixed to each individual container, or (c) possesses in violation of any provision of this chapter any bottled soft drink or soft drink syrup without the proper tax stamp or tax crown being affixed to each individual container, or (d) refuses to surrender upon demand of any authorized representative of the comptroller any bottled soft drink or soft drink syrup processed in violation of any provision of this chapter, or (e) sells any bottled soft drink or soft drink syrup without at the time of said sale having a valid permit posted so as to be easily seen by the public, or (f) fails to deliver an invoice required by law to be delivered to a purchaser of bottled soft drinks or soft drink syrup, or (g) receives or accepts delivery of bottled soft drinks or soft drink

syrup without tax stamps or tax crowns affixed without at the time having in his possession the requisite amount or quantity of tax stamps or tax crowns to cover the tax levied on such products, or (h) knowingly transports any bottled soft drink or soft drink syrup without a tax stamp or tax crown being affixed to each individual container, or (i) while transporting any bottled soft drink or soft drink syrup willfully refuses to stop the motor vehicle he is operating when called upon to do so by a person authorized to stop said motor vehicle, or (j) refuses to permit a full and complete inspection by an authorized person of any vehicle or of premises where bottled soft drinks or soft drink syrups are manufactured, produced, made, mixed, compounded, stored, transported, sold, or offered for sale or exchange, or (k) destroys, mutilates, or secretes any of the books and records required under the provisions of this chapter to be kept, or (l) refuses to permit the comptroller, or the attorney general of this state to inspect, examine, or audit any books and records required to be kept or any other records incident to the conduct of the bottled soft drink or soft drink syrup business that may be kept, or (m) knowingly makes any false entry or fails to make entries in the books and records required by the provisions of this article to be kept, or (n) fails to keep for a period of two (2) years in Texas any books and records required by this chapter to be kept, or (o) fails to comply with any provision of this chapter, or any rule or regulation promulgated by the comptroller or violates the same, is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 nor more than \$1,000 or by confinement in the county jail for not more than one year, or by both such fine and confinement.

"Article 31.18. ADDITIONAL PENALTIES

"A person who (a) uses, sells, offers for sale, or possesses for the purpose of sale, any previously used stamps or crowns, or (b) attaches or causes to be attached to any individual container of bottled soft drink or soft drink syrup, any previously used stamp or crown, or (c) uses or consents to the use of any previously used stamp or crown in connection with the sale or offering for sale of any bottled soft drink or soft drink

syrup, or (d) purchases tax stamps or tax crowns from any person other than the Treasurer of the State of Texas without having a requisition from the comptroller authorizing the purchase, or (e) sells any tax stamps or tax crowns to any person other than the Treasurer of the State of Texas without having a requisition from the comptroller authorizing the sale, or (f) knowingly makes, delivers to, and files with the comptroller a false report, or an incomplete report or (g) knowingly fails to make and deliver to the comptroller a report, as required by the provisions of this chapter, is guilty of a felony and upon conviction is punishable by confinement in the state penitentiary for not more than five years or by confinement in the county jail for not less than one month nor more than two years, or by a fine of not less than \$100 nor more than \$5,000 or by both fine and imprisonment.

"If any penalties prescribed in Article 31.17 of this chapter overlap as to offenses which are also punishable under Article 31.18 of this chapter, then the penalties prescribed by this article shall apply and control all other penalties. The term 'previously used tax stamp or tax crown' as used in this chapter shall be construed to mean any tax stamp or tax crown which is used, sold, or possessed for the purpose of sale or use, to evidence the payment of the tax herein imposed on any bottled soft drink or soft drink syrup after that stamp or crown has, anterior to such use, sale, or possession, been used on another or separate container of bottled soft drink or soft drink syrup to evidence the payment of tax. Venue of any civil or criminal proceeding under this article shall be in Travis County, Texas, or in the county in Texas where the offense occurred.

"Article 31.18. PENALTY FOR COUNTERFEITING TAX STAMPS OR CROWNS

"A person who prints, engraves, makes, issues, sells, or circulates, or who possesses, or has in his possession, with intent to use, sell, circulate, or pass, any counterfeit tax stamp or tax crown, or who uses, or consents to the use of, any counterfeit tax stamp or tax crown in connection with the sale of bottled soft drinks or soft drink syrup, or who places or causes to be placed on any

individual container of bottled soft drink or soft drink syrup, any counterfeit tax stamp or crown, is guilty of a felony and upon conviction is punishable by confinement in the state penitentiary for a term of not less than two years nor more than 20 years.

"Article 31.19. ALLOCATION OF REVENUES

"All revenues derived from the tax imposed by this chapter shall be deposited in the General Revenue Fund."

Sec. 39. This Act shall take effect October 1, 1968.

Sec. 40. The fact that the State of Texas needs additional revenue to implement and operate essential existing programs creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and this Rule is hereby suspended, and that this Act take effect and be in force from and after October 1, 1968, and it is so enacted.

Senator Hardeman called for a full reading of the amendment.

Senator Wilson moved that the rule calling for a full reading of the amendment be suspended.

Senator Hardeman raised the Point of Order that the motion by Senator Wilson was not submitted in writing.

The President sustained the Point of Order.

Senator Schwartz submitted the following Motion in Writing:

I respectfully move that the requested reading of the pending Wilson amendment to H. B. No. 2 not be had and that Rule 62 be suspended as well as any other necessary rules to dispense with the reading of said amendment.

SCHWARTZ

The Motion in Writing was read.

Question on the adoption of the Motion in Writing.

The Motion in Writing failed of adoption by the following vote:

Yeas—10

Bernal	Harrington
Cole	Hazlewood
Grover	Hightower

Mauzy	Schwartz
Patman	Wilson

Nays—20

Aikin	Herring
Bates	Jordan
Berry	Kennard
Blanchard	Moore
Brooks	Ratliff
Christie	Reagan
Creighton	Strong
Hall	Wade
Hardeman	Watson
Harris	Word

Present—Not Voting

Connally

The President directed the Secretary to read the amendment by Senator Wilson in full.

(President Pro Tempore in the Chair.)

Pending the reading of the amendment, Senator Word raised the Point of Order that there was not a quorum of the Senate present.

The President Pro Tempore directed the Secretary of the Senate to call the roll to ascertain if a quorum of the Senate was present.

The roll was called and the following Senators were present:

Present—29

Aikin	Hightower
Bates	Jordan
Bernal	Kennard
Berry	Mauzy
Brooks	Moore
Christie	Patman
Cole	Ratliff
Connally	Reagan
Creighton	Schwartz
Grover	Strong
Hardeman	Wade
Harrington	Watson
Harris	Wilson
Hazlewood	Word
Herring	

Absent

Blanchard	Hall
-----------	------

The President Pro Tempore directed the Secretary of the Senate to continue the reading of the amendment by Senator Wilson.

Pending the reading of the amend-

ment, Senator Bernal raised the Point of Order there was not a quorum of the Senate present.

Senator Hardeman raised the further Point of Order that no business had been transacted since the last roll call.

The President Pro Tempore sustained the Point of Order.

(President in the Chair.)

Senator Hardeman moved that further reading of the amendment by Senator Wilson be dispensed with.

There was no objection offered.

Senator Herring offered the following amendment to the pending amendment by Senator Wilson:

Amend the pending Wilson amendment to House Bill No. 2 by striking out Section 40 thereof and all of the provisions therein contained.

The amendment was read.

Question on the adoption of the amendment to the pending amendment by Senator Wilson, "Yeas" and "Nays" were demanded.

The amendment to the pending amendment was adopted by the following vote:

Yeas—19

Aikin	Herring
Bates	Hightower
Bernal	Jordan
Berry	Patman
Blanchard	Ratliff
Cole	Reagan
Creighton	Schwartz
Grover	Wade
Hall	Watson
Hardeman	

Nays—12

Brooks	Kennard
Connally	Mauzy
Christie	Moore
Harrington	Strong
Harris	Wilson
Hazlewood	Word

Senator Blanchard offered the following amendment to the pending amendment by Senator Wilson:

Amend the Wilson amendment to H. B. No. 2 by striking all of Sec-

tion 13 and renumbering all other sections accordingly.

The amendment was read.

Senator Wilson moved to table the amendment to the pending amendment. The motion to table was lost.

Question recurring on the adoption of the amendment to the pending amendment "Yeas" and "Nays" were demanded.

The amendment to the pending amendment failed of adoption by the following vote:

Yeas—14

Aikin	Hightower
Bates	Moore
Berry	Patman
Blanchard	Ratliff
Hall	Reagan
Hardeman	Wade
Herring	Watson

Nays—17

Bernal	Hazlewood
Brooks	Jordan
Christie	Kennard
Cole	Mauzy
Connally	Schwartz
Creighton	Strong
Grover	Wilson
Harrington	Word
Harris	

Senator Schwartz offered the following amendment to the pending amendment by Senator Wilson:

Amend the pending amendment to H. B. No. 2 by striking (d) therefrom on lines 31, 32, and 33 thereof on page 13.

The amendment to the pending amendment was read.

(Senate Moore in the Chair.)

Senator Wilson moved to table the amendment to the pending amendment.

(President in the Chair.)

Question on the motion to table, "Yeas" and "Nays" were demanded.

The motion to table was lost by the following vote:

Yeas—15

Aikin	Blanchard
-------	-----------

Brooks	Kennard
Grover	Mauzy
Hall	Strong
Harrington	Wade
Hazlewood	Wilson
Herring	Word
Hightower	

Nays—16

Bates	Harris
Bernal	Jordan
Berry	Moore
Christie	Patman
Cole	Ratliff
Connally	Reagan
Creighton	Schwartz
Hardeman	Watson

Question recurring on the adoption of the amendment to the pending amendment, "Yeas" and "Nays" were demanded.

The amendment to the pending amendment was adopted by the following vote:

Yeas—18

Bates	Herring
Bernal	Jordan
Berry	Moore
Christie	Patman
Cole	Ratliff
Connally	Reagan
Creighton	Schwartz
Hardeman	Wade
Harris	Watson

Nays—13

Aikin	Hightower
Blanchard	Kennard
Brooks	Mauzy
Grover	Strong
Hall	Wilson
Harrington	Word
Hazlewood	

Senator Bates offered the following amendment to the pending amendment by Senator Wilson:

Amend the Wilson amendment to H. B. No. 2 by adding to paragraph "D," page 9, a new subsection as follows:

(g) There are exempted from taxes imposed by this chapter the receipts from the sale, lease or rental of production, distribution or the storage, use or other consumption in this State of alcoholic beverages, including distilled spirits, beer, ale and wine, subject to a tax imposed by the Texas

Liquor Control Act, as amended, except that any such alcoholic beverages shall be taxable when, and only when, consumed with food as a part of a meal served on or off the premises of the vendor for consumption at tables, chairs or counters or from trays, glasses, dishes or other tableware provided by the vendor.

The amendment to the pending amendment was read and was adopted.

Record of Votes

Senators Aikin, Hightower, Word and Mauzy asked to be recorded as voting "Nay" on the adoption of the above amendment.

Senator Hardeman offered the following amendment to the pending amendment by Senator Wilson:

Amend Wilson amendment to H. B. 2 by adding a new Section to be numbered Section 16a to read as follows:

"Sec. 16a. There is hereby assessed and levied to be collected, as provided by regulation, a privilege tax upon each person engaged or continuing within this State, in the business of growing, felling, cutting, severing and producing logs or any timber products from the soil or water, for sale, profit or commercial use; or purchasing, logging or selling logs or timber products for commercial purposes. The tax imposed by this Act shall be measured by the quantity of value, as follows:

1. For saw-logs—40¢ per thousand feet, Log Scale Doyle Rule for pine and soft woods; 30¢ per thousand feet, Log Scale Doyle Rule, for hardwoods and all other lumber, except:

a. Poles, piling and such, 1% of market value;

b. Pulpwood, 9¢ per cord of 128 cubic feet.

2. This tax shall be levied against the grower, but shall be collected by the Comptroller of the State of Texas as provided by rule and regulation as promulgated by him, not inconsistent with the Act.

3. Penalty for non-payment shall be the same as provided in the sales and use tax section of this Act."

The amendment to the pending amendment was read and was adopted.

Record of Votes

Senators Aikin, Grover, Wilson, Reagan and Harrington asked to be recorded as voting "Nay" on the adoption of the above amendment.

Senator Hall offered the following amendment to the pending amendment by Senator Wilson:

Amend the pending Wilson amendment to H. B. 2 by striking Section 34 thereof and by adding three new sections, to be numbered appropriately, to read as follows and renumbering remaining sections of the bill:

Sec. — Section 1, Article 12.01, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"(1) Except as herein provided, every domestic and foreign corporation heretofore or hereafter chartered or authorized to do business in Texas or doing business in Texas, shall, on or before May 1st of each year, file such reports as are required by Articles 12.08 and 12.19 and pay in advance to the Comptroller a franchise tax for the year following which shall be based on whichever of the following Subsections (a), (b), or (c) shall yield the greatest tax:

"(a) Basic Tax. Three Dollars (\$3) per One Thousand Dollars (\$1,000) or fractional part thereof applied to that portion of the sum of the stated capital, surplus and undivided profits, the sum of which for the purposes of this Chapter is hereafter referred to as 'taxable capital,' allocable to Texas in accordance with Article 12.02 of this Chapter.

"As used in this Chapter, the phrase 'stated capital' shall have the same meaning as defined in Article 1.02 of the Texas Business Corporation Act.

"(b) Three Dollars (\$3) per One Thousand Dollars (\$1,000) or fractional part thereof applied to the assessed value for County ad valorem tax purposes of the property owned by the corporation in this State.

"(c) Thirty-five Dollars (\$35).

Sec. — Section 3, Article 12.01, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"(3) Except as provided in preceding Subsection (2), all public utility

corporations, which shall include any such corporation engaged solely in the business of public utilities as defined by the laws of Texas whose rates or services are regulated, or subject to a regulation in whole or in part, by law, shall pay a franchise tax as provided in this Article which shall be based on whichever of the following shall yield the greatest tax:

"(a) Three Dollars (\$3) per One Thousand Dollars (\$1,000) or fractional part thereof applied to that portion of the stated capital, surplus and undivided profits, allocable to Texas in accordance with Article 12.02 of this Chapter.

"(b) Three Dollars (\$3) per One Thousand Dollars (\$1,000) or fractional part thereof applied to the assessed value for County ad valorem tax purposes of the property owned by the corporation in this State.

"(c) Thirty-five Dollars (\$35).

Sec. —. Section 1, Article 12.19, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"(1) In lieu of the franchise tax levied by Art. 12.01 of this Chapter, any corporation which has previously paid a franchise tax in Texas under the provisions of this Chapter and whose total assets are less than One Hundred Fifty Thousand Dollars (\$150,000), may elect to pay between January 1st and May 1st of each year a franchise tax for the year following in accordance with the following schedule:

"If Total Assets

Are at Least	But Less Than	The Tax Shall Be
\$ 0.00	\$ 15,000.00	\$ 35.00
15,000.00	20,000.00	45.00
20,000.00	25,000.00	55.00
25,000.00	30,000.00	70.00
30,000.00	40,000.00	90.00
40,000.00	50,000.00	115.00
50,000.00	60,000.00	140.00
60,000.00	70,000.00	165.00
70,000.00	80,000.00	190.00
80,000.00	90,000.00	215.00
90,000.00	100,000.00	240.00
100,000.00	110,000.00	265.00
110,000.00	120,000.00	290.00
120,000.00	130,000.00	315.00
130,000.00	140,000.00	340.00
140,000.00	150,000.00	365.00"

The amendment to the pending amendment was read and was adopted.

Record of Votes

Senators Strong, Mauzy, Word and Bernal asked to be recorded as voting "Nay" on the adoption of the above amendment.

Senator Hightower offered the following amendment to the pending amendment by Senator Wilson:

Amend pending amendment to House Bill 2 by adding a new section appropriately numbered and renumber existing sections as necessary, the new section to read as follows:

Sec. —. Subsection (M), Article 20.04, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"(M) Animal Life; Feed; Seeds; Plants; Fertilizer. There are exempted from the taxes imposed by this Chapter the receipts from sales of, and the storage, use or other consumption of:

"(1) Any form of animal life of a kind, the products of which ordinarily constitute food for human consumption. Horses, mules, and work animals.

"(2) Feed for farm and ranch animals and for animals which are held for sale in the regular course of business.

"(3) Seeds and annual plants the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business.

"(4) Fungicides, insecticides, herbicides, defoliants and desiccants exclusively used or employed on farms or ranches in the production of food for human consumption, feed for any form of animal life, or other agricultural products to be sold in the regular course of business.

"(5) Fertilizer.

"(6) Machinery or equipment exclusively used or employed on farms or ranches in the production of food for human consumption, production of grass, the building or maintaining of roads and water facilities, feed for any form of animal life, or other agricultural products to be sold in the regular course of business."

The amendment to the pending amendment was read and was adopted.

Record of Votes

Senators Mauzy, Grover, Bernal, Brooks, Kennard, Berry, Schwartz,

Strong, and Jordan asked to be recorded as voting "Nay" on the adoption of the above amendment.

Senator Hightower offered the following amendment to the pending amendment by Senator Wilson:

Amend Section 2 of House Bill 2, proposing amendment of Article 20.021, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as heretofore amended by Section 1, Chapter 138, Acts of the 58th Legislature, 1963, by inserting between the first and second sentences of Subparagraph (A), as therein proposed to be amended, the following:

"It is further specified that where tangible personal property is segregated in contemplation of transfer of title or possession and is thereafter to be transported by common carrier from the seller to the buyer, with the price fixed F.O.B. the seller's place of business, and with transportation charges separately stated, the tax herein imposed shall be computed only upon the basis of the charge for the tangible personal property itself, exclusive of the separately stated and independently fixed transportation charges."

The amendment to the pending amendment was read.

On motion of Senator Hightower and by unanimous consent, the amendment was withdrawn.

Senator Hardeman moved to table the amendment by Senator Wilson as amended.

Question on the motion to table the amendment by Senator Wilson as amended, "Yeas" and "Nays" were demanded.

The motion to table prevailed by the following vote:

Yeas—18

Bates	Hazlewood
Berry	Herring
Blanchard	Hightower
Cole	Moore
Creighton	Patman
Grover	Ratliff
Hall	Reagan
Hardeman	Wade
Harris	Watson

Nays—13

Aikin	Brooks
Bernal	Christie

Connally
Harrington
Jordan
Kennard
Mauzy

Schwartz
Strong
Wilson
Word

Senator Schwartz offered the following amendment to the bill:

Amend H. B. No. 2 by adding the following new sections after the enacting clause thereof and renumbering the sections which follow

Section 1. Section 1, Article 12.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"(1) Except as herein provided, every domestic and foreign corporation heretofore or hereafter chartered or authorized to do business in Texas or doing business in Texas, shall, on or before May 1st of each year, file such reports as are required by Articles 12.08 and 12.19 and pay in advance to the Comptroller a franchise tax for the year following which shall be based on whichever of the following Subsections (a), (b), or (c) shall yield the greatest tax:

"(a) Basic Tax

"(i) Two Dollars and Seventy-five Cents (\$2.75) per One Thousand Dollars (\$1,000) or fractional part thereof applied to that portion of the sum of the stated capital, surplus and undivided profits, the sum of which for the purposes of this Chapter is hereafter referred to as 'taxable capital,' allocable to Texas in accordance with Article 12.02 of this Chapter.

"As used in this Chapter, the phrase 'Stated capital' shall have the same meaning as defined in Article 1.02 of the Texas Business Corporation Act.

"(ii) Tax on debt. In addition to the franchise tax due and payable under Subsection (1)(a)(i) of Article 12.01 of this Chapter, there is hereby levied on all corporations paying a franchise tax under said Subsection (i) for the privilege of doing business in the corporate form during the periods listed below, an additional tax as follows:

	An Additional tax for the year of
"For the Period from May 1, 1968, to and including April 30, 1969	\$2.25
May 1, 1969, to and including April 30, 1970	\$2.00
May 1, 1970, to and including April 30, 1971	\$1.50

May 1, 1971, to and including
 April 30, 1972 \$1.00
 May 1, 1972, to and including
 April 30, 1973 \$0.50
 per One Thousand Dollars (\$1,000)
 or fractional part thereof applied to
 that portion of taxable debt allocable
 to Texas.

"For the purposes of this Subsection (1)(a)(ii), 'Taxable Debt' shall mean outstanding bonds, notes and debentures, including all written evidences of indebtedness which bear a maturity date of one (1) year or more from date of issue and all such instruments which bear a maturity date of less than one (1) year from date of issue which represent indebtedness which has remained continuously outstanding for a period of one (1) year or more from date of inception whether or not said indebtedness has been removed or extended by the issuance of other evidences of the same indebtedness to the same or other parties, but this term shall not include instruments which have been previously classified as surplus.

"Taxable debt allocable to Texas shall be determined by using the same percentage used to allocate taxable capital to Texas under the provisions of Article 12.02.

"The additional franchise tax levied by this Subsection (1)(a)(ii) shall expire after April 30, 1973.

"(b) Two Dollars and Seventy-five Cents (\$2.75) per One Thousand Dollars (\$1,000) or fractional part thereof applied to the assessed value for County ad valorem tax purposes of the property owned by the corporation in this State.

"(c) Thirty-five Dollars (\$35).

Sec. —. Section 3, Article 12.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"(3) Except as provided in preceding Subsection (2), all public utility corporations, which shall include any such corporation engaged solely in the business of public utilities as defined by the laws of Texas whose rates or services are regulated, or subject to a regulation in whole or in part, by law, shall pay a franchise tax as provided in this Article which shall be based on whichever of the following shall yield the greatest tax:

"(a) Two Dollars and Seventy-five Cents (\$2.75) per One Thousand Dol-

lars (\$1,000) or fractional part thereof applied to that portion of the stated capital, surplus and undivided profits, allocable to Texas in accordance with Article 12.02 of this Chapter.

"(b) Two Dollars and Seventy-five Cents (\$2.75) per One Thousand Dollars (\$1,000) or fractional part thereof applied to the assessed value for County ad valorem tax purposes of the property owned by the corporation in this State.

"(c) Thirty-five Dollars (\$35).

Sec. —. Section 1, Article 12.19, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"(1) In lieu of the franchise tax levied by Art. 12.01 of this Chapter, any corporation which has previously paid a franchise tax in Texas under the provisions of this Chapter and whose total assets are less than One Hundred Fifty Thousand Dollars (\$150,000), may elect to pay between January 1st and May 1st of each year a franchise tax for the year following in accordance with the following schedule:

"If Total Assets

Are at Least	But Less Than	The Tax Shall Be
\$ 0.00	\$ 15,000.00	\$ 35.00
15,000.00	20,000.00	45.00
20,000.00	25,000.00	55.00
25,000.00	30,000.00	70.00
30,000.00	40,000.00	90.00
40,000.00	50,000.00	115.00
50,000.00	60,000.00	140.00
60,000.00	70,000.00	165.00
70,000.00	80,000.00	190.00
80,000.00	90,000.00	215.00
90,000.00	100,000.00	240.00
100,000.00	110,000.00	265.00
110,000.00	120,000.00	290.00
120,000.00	130,000.00	315.00
130,000.00	140,000.00	340.00
140,000.00	150,000.00	365.00"

The amendment was read.

Senator Hall offered the following substitute for the pending amendment:

Substitute the following for the pending Schwartz amendment:

Amend House Bill No. 2 by adding three new sections, to be numbered appropriately, to read as follows and renumbering remaining sections of the bill:

Sec. —. Section 1, Article 12.01, Title 122A, Taxation-General, Re-

vised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"(1) Except as herein provided, every domestic and foreign corporation heretofore or hereafter chartered or authorized to do business in Texas or doing business in Texas, shall, on or before May 1st of each year, file such reports as are required by Article 12.08 and 12.19 and pay in advance to the Comptroller a franchise tax for the year following which shall be based on whichever of the following Subsections (a), (b), or (c) shall yield the greatest tax:

"(a) Basic Tax. Three Dollars (\$3) per One Thousand Dollars (\$1,000) or fractional part thereof applied to that portion of the sum of the stated capital, surplus and undivided profits, the sum of which for the purposes of this Chapter is hereafter referred to as 'taxable capital,' allocable to Texas in accordance with Article 12.02 of this Chapter.

"As used in this Chapter, the phrase 'stated capital' shall have the same meaning as defined in Article 1.02 of the Texas Business Corporation Act.

"(b) Three Dollars (\$3) per One Thousand Dollars (\$1,000) or fractional part thereof applied to the assessed value for County ad valorem tax purposes of the property owned by the corporation in this State.

"(c) Thirty-five Dollars (\$35).

Sec. —. Section 3, Article 12.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"(3) Except as provided in preceding Subsection (2), all public utility corporations, which shall include any such corporation engaged solely in the business of public utilities as defined by the laws of Texas whose rates or services are regulated, or subject to a regulation in whole or in part, by law, shall pay a franchise tax as provided in this Article which shall be based on whichever of the following shall yield the greatest tax:

"(a) Three Dollars (\$3) per One Thousand Dollars (\$1,000) or fractional part thereof applied to that portion of the stated capital, surplus and undivided profits, allocable to Texas in accordance with Article 12.02 of this Chapter.

"(b) Three Dollars (\$3) per One Thousand Dollars (\$1,000) or frac-

tional part thereof applied to the assessed value for County ad valorem tax purposes of the property owned by the corporation in this State.

"(c) Thirty-five Dollars (\$35).

Sec. —. Section 1, Article 12.19, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"(1) In lieu of the franchise tax levied by Art. 12.01 of this Chapter, any corporation which has previously paid a franchise tax in Texas under the provisions of this Chapter and whose total assets are less than One Hundred Fifty Thousand Dollars (\$150,000), may elect to pay between January 1st and May 1st of each year a franchise tax for the year following in accordance with the following schedule:

"If Total Assets

Are at Least	But Less Than	The Tax Shall Be
\$ 0.00	\$ 15,000.00	\$ 35.00
15,000.00	20,000.00	45.00
20,000.00	25,000.00	55.00
25,000.00	30,000.00	70.00
30,000.00	40,000.00	90.00
40,000.00	50,000.00	115.00
50,000.00	60,000.00	140.00
60,000.00	70,000.00	165.00
70,000.00	80,000.00	190.00
80,000.00	90,000.00	215.00
90,000.00	100,000.00	240.00
100,000.00	110,000.00	265.00
110,000.00	120,000.00	290.00
120,000.00	130,000.00	315.00
130,000.00	140,000.00	340.00
140,000.00	150,000.00	365.00"

The substitute for the pending amendment was read.

Senator Schwartz moved to table the substitute for the pending amendment.

Question on the motion to table the substitute amendment by Senator Hall for the pending amendment by Senator Schwartz, "Yeas" and "Nays" were demanded.

The motion to table prevailed by the following vote:

Yeas—17

Bates	Harrington
Bernal	Herring
Berry	Jordan
Brooks	Kennard
Christie	Mauzy
Cole	Moore
Connally	Schwartz
Grover	Strong
Hardeman	

Nays—14

Aikin	Patman
Blanchard	Ratliff
Creighton	Reagan
Hall	Wade
Harris	Watson
Hazlewood	Wilson
Hightower	Word

Question recurring on the adoption of the amendment by Senator Schwartz.

Senator Hardeman moved to table the amendment by Senator Schwartz to H. B. No. 2.

Question on the motion to table, "Yeas" and "Nays" were demanded.

The motion to table was lost by the following vote:

Yeas—13

Berry	Moore
Blanchard	Ratliff
Creighton	Reagan
Hall	Wade
Hardeman	Watson
Harris	Word
Hazlewood	

Nays—18

Aikin	Herring
Bates	Hightower
Bernal	Jordan
Brooks	Kennard
Christie	Mauzy
Cole	Patman
Connally	Schwartz
Grover	Strong
Harrington	Wilson

Question recurring on the adoption of the amendment by Senator Schwartz, the amendment was adopted.

Record of Votes

Senators Ratliff, Hall, Reagan, Hardeman, Harris, Wade, Hazlewood and Creighton asked to be recorded as voting "Nay" on the adoption of the amendment by Senator Schwartz.

Senator Schwartz offered the following amendment to the bill:

Amend House Bill No. 2, by adding below the enacting clause and substituting in lieu thereof the following sections and renumbering the sections which follow:

Section 1. Article 3.01, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"Art. 3.01 Calculation of Tax

"(1) There is hereby levied an occupation tax on the business or occupation of producing gas within this State, computed as follows:

"A tax shall be paid by each producer on the amount of gas produced and saved within this State equivalent to eight percent (8%) of the market value thereof as and when produced.

"Provided, however, that the amount of the tax on sweet and sour gas shall never be less than 121/1500 of one cent (1¢) per one thousand (1,000) cubic feet.

"(2) In calculating the tax herein levied, there shall be excluded: (a) gas injected into the earth in this State, unless sold for such purpose; (b) gas produced from oil wells with oil and lawfully vented or flared; (c) gas used for lifting oil, unless sold for such purposes; and"

The amendment was read.

Senator Hardeman moved to table the amendment.

Question on the motion to table, "Yeas" and "Nays" were demanded.

The motion to table prevailed by the following vote:

Yeas—20

Bates	Harris
Berry	Hazlewood
Blanchard	Hightower
Brooks	Moore
Christie	Ratliff
Cole	Reagan
Creighton	Wade
Grover	Watson
Hall	Wilson
Hardeman	Word

Nays—11

Aikin	Kennard
Bernal	Mauzy
Connally	Patman
Harrington	Schwartz
Herring	Strong
Jordan	

Senator Wilson offered the following amendment to the bill:

Amend House Bill No. 2, by adding a new section to be numbered ap-

propriately to read as follows and re-number sections as necessary:

Sec. —. Section (B), Article 20.04, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

“(B) Items Taxed Under Existing Statutes.

“(1) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental, production or distribution, or the storage, use or other consumption in this State of:

“(a) oil as taxed under the provisions of Chapter 4 of this Title;

“(b) sulphur as taxed under the provisions of Chapter 5 of this Title;

“(c) motor fuels as defined, taxed or exempted under the provisions of Chapter 9 of this Title;

“(d) special fuels as defined, taxed or exempted under the provisions of Chapter 10 of this Title; and

“(e) cement as taxed under the provisions of Chapter 18 of this Title.

“(f) motor vehicles, trailers and semitrailers as defined and taxed under the provisions of Chapter 6 of this Title.

“(g) cigarettes as defined and taxed under the provisions of Chapter 7 of this Title;

“(h) cigars and tobacco products as defined and taxed under the provisions of Chapter 8 of this Title;

“(2) There are exempted from the taxes imposed by this Chapter the receipts from the sale, production, distribution, lease or rental of and the storage, use or other consumption in this State of water.

“(3) There are exempted from the taxes imposed by this Chapter the receipts from the sale, production, distribution, lease or rental of and storage, use or other consumption in this State of telephone and telegraph service.

The amendment was read.

Senator Hardeman moved to table the amendment by Senator Wilson.

Question on the motion to table, “Yeas” and “Nays” were demanded.

The motion to table prevailed by the following vote:

Yeas—18

Bates

Bernal

Berry
Christie
Cole
Connally
Creighton
Hardeman
Harris
Herring

Jordan
Moore
Patman
Ratliff
Reagan
Schwartz
Wade
Watson

Nays—13

Aikin
Blanchard
Brooks
Grover
Hall
Harrington
Hazlewood

Hightower
Kennard
Mauzy
Strong
Wilson
Word

Senator Wilson offered the following amendment to the bill:

Amend House Bill No. 2 by striking all below the enacting clause and substituting the following:

Section 1. Section (D), Article 20.01, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

“(D) Receipts.

“(1) ‘Receipts’ means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers or the total amount charged for taxable service, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

“(a) The cost of the tangible personal property sold. However, in accordance with such rules and regulations as the Comptroller may prescribe, a deduction may be taken if the retailer has purchased tangible personal property for some purpose other than resale, has reimbursed his vendor for tax which the vendor is required to pay to the State or has paid the use tax with respect to the tangible personal property, and has resold the tangible personal property prior to making any use of the tangible personal property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the tangible personal property.

"(b) The cost of the materials used, labor or service costs, interest paid, losses or any other expenses.

"(c) The cost of transportation of the tangible personal property prior to its sale to the purchaser.

"(d) The cost of transportation incident to the performance of a taxable service.

"(2) 'Receipts' does not include any of the following:

"(a) Cash discounts allowed on sales.

"(b) Sales price of tangible personal property returned by customers when the full sales price is refunded either in cash or credit.

"(c) The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

"(d) The amount charged for finance charges, carrying charges, service charges or interest from credit extended on sales of tangible personal property under conditional sale contracts or other contracts providing for deferred payments of the purchase price.

"(e) The value of tangible personal property taken by a seller in trade as all or a part of the consideration for a sale of tangible personal property of any kind or nature.

"(f) Charges for transportation of tangible personal property after sale."

Sec. 2. Section (F), Article 20.01, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(F) Occasional Sale. 'Occasional Sale' means:

"(1) One or two sales of tangible personal property or taxable services at retail during any twelve-month period by a person who does not hold himself out as engaging (or who does not habitually engage) in the business of selling such tangible personal property or taxable services at retail.

"(2) The sale of the entire operating assets of a business or of a separate division, branch or identifiable segment of a business. For the purpose of this Subsection a 'separate division, branch or identifiable segment' shall be deemed to exist if prior

to its sale the income and expenses attributable to such 'separate division, branch or identifiable segment' could be separately ascertained from the books of account or record. The purpose of this Subsection is to clarify existing law and merely expresses the original intention of the Legislature.

"(3) Any transfer of all or substantially all the property held or used by a person in the course of an activity when after such transfer the real or ultimate ownership of such property is substantially similar to that which existed before such transfer. For the purposes of this Subsection, stockholders, bondholders, partners or other persons holding an interest in a corporation or other entity are regarded as having the 'real or ultimate ownership' of the property of such corporation or other entity."

Sec. 3. Section (G), Article 20.01, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(G) Purchase. 'Purchase' means:

"(1) Any transfer of title or possession, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration.

"(2) A transaction whereby the possession of tangible personal property is transferred but the seller retains the title as security for the payment of the price.

"(3) A transfer, for a consideration, of tangible personal property which has been produced, fabricated or printed to the special order of the customer.

"(4) The acceptance or utilization of any taxable service for a consideration."

Sec. 4. Section (I), Article 20.01, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(I) Retail Sale or Sale at Retail. 'Retail Sale' or 'Sale at Retail' means:

"(1) Any sale of tangible personal property or taxable service.

"(2) The delivery in this State of tangible personal property by an own-

er or former owner thereof or by a factor or agent of such owner or former owner or factor, if the delivery is to a consumer or person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in this State. The person making the delivery in such cases shall include the retail selling price of the tangible personal property in his receipts."

Sec. 5. Subsection (1), Section (J), Article 20.01, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(1) 'Retailer' includes:

"(a) Every seller engaged in the business of making sales of tangible personal property for storage, use or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use or other consumption.

"(b) Every person making more than two (2) retail sales of tangible personal property during any twelve-month period, including sales made in the capacity of assignee for the benefit of creditors, or receivers or trustee in bankruptcy.

"(c) Every person who leases or rents to another tangible personal property for storage, use or other consumption, except that person engaged in the leasing or licensing of motion picture films of any kind or character to motion picture theatres, television stations and others shall be liable for the tax levied under the provisions of this law, and they shall not pass said tax along to the person or persons to whom they lease or licensed said motion picture films.

"(d) Every person selling taxable services."

Sec. 6. Subsection (1), Section (K), Article 20.01, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(1) 'Sale' means and includes any transfer of title or possession, or segregation in contemplation of transfer of title or possession, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration.

'Sale' includes the performance of a taxable service for a consideration."

Sec. 7. Section (L), Article 20.01, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(L) Sales Price.

"(1) 'Sales Price' means the total amount for which tangible personal property or a taxable service is sold, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

"(a) The cost of the tangible personal property sold.

"(b) The cost of material used, labor or service costs, interest paid, losses, or any other expenses.

"(c) The cost of transportation of the tangible personal property prior to its sale or purchase.

"(d) The cost of transportation incident to the performance of a taxable service.

"(2) The total amount for which tangible personal property is sold includes all of the following:

"(a) Any services which are a part of the sale.

"(b) Any amount for which credit is given to the purchaser by the seller.

"(3) 'Sales Price' does not include any of the following:

"(a) Cash discounts allowed on sales.

"(b) The amount charged for tangible personal property returned by customers when the entire amount charged therefor is refunded either in cash or credit.

"(c) The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

"(d) The amount charged for finance charges, carrying charges, service charges or interest from credit extended on sales of tangible personal property under conditional sale contracts or other contracts providing for deferred payments of the purchase price.

"(e) The value of tangible personal property taken by a seller in trade as all or a part of the consideration

for a sale of tangible personal property of any kind or nature.

"(f) Charges for transportation of tangible personal property after sale."

Sec. 8. Section (M), Article 20.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

(M) Seller. 'Seller' includes every person engaged in the business of selling, leasing or renting tangible personal property or taxable services of a kind, the receipts from the retail sale, lease or rental of which are required to be included in the measure of the limited sales tax."

Sec. 9. Section (R), Article 20.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(R) Use. 'Use' includes the exercise of any right or power over tangible personal property incident to the ownership of that tangible personal property except that it does not include the sale of that tangible personal property in the regular course of business or the transfer of tangible personal property as an integral part of a taxable service rendered in the regular course of business. 'Use' specifically includes the incorporation of tangible personal property into real estate or into improvements upon real estate without regard to the fact that such real estate and improvements may subsequently be sold as such except as provided in Article 20.01(T)(2)."

Sec. 10. Section (S), Article 20.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(S) Sale for Resale. 'Sale for Resale' means:

"(1) A sale of tangible personal property to any purchaser who is purchasing said tangible personal property for the purpose of reselling it in the normal course of business either in the form or condition in which it is purchased, or as an attachment to, or integral part of, other tangible personal property.

"(2) A sale of tangible personal property to a purchaser for the sole purpose of that purchaser's renting or leasing the tangible personal property to another person, but not if incidental to the renting or leasing of real estate.

"(3) A sale of tangible personal property to any purchaser who is purchasing the tangible personal property for the purpose of subsequently transferring it as an integral part of a taxable service."

Sec. 11. Section (T), Article 20.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"Article 20.01(T). Contractor or Repairman. 'Contractor or Repairman' shall mean any person who performs any repair services upon tangible personal property or who performs any improvement upon real estate and who, as a necessary and incidental part of performing such services, incorporates tangible personal property belonging to him into the property being so repaired or improved. Contractor or repairman shall be considered to be the consumer of such tangible personal property furnished by him and incorporated into the property of his customer, for all the purposes of this Chapter.

"There are exempted from the computation of the amount of taxes imposed by this Chapter, the receipts from the sale, lease or rental of any tangible personal property to, or the storage, use or other consumption of tangible personal property by any contractor for the performance of a construction contract for the improvement of realty for any exempt organization as defined in Section 20.04(F) of this Chapter. Any such contractor may purchase, rent or lease all materials, supplies, equipment and other items incorporated into the project or the value of any such item used and/or consumed by the contractor in performing said construction contract by issuing to the retailer from whom the materials, supplies, equipment, or other items were purchased, rented, or leased an exemption certificate in lieu of any tax imposed by this Chapter."

Sec. 12. Section (U), Article 20.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(U) Manufacturing. 'Manufacturing' shall mean and include every operation commencing with the first production stage of any article of tangible personal property and ending with the completion of tangible personal property having the physical properties (including packaging, if any) which it has when transferred by the manufacturer to another. 'Manufacturing' shall include the production of telephone and telegraph services."

Sec. 13. Article 20.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended by adding a new Section (V) to read as follows:

"(V) Taxable Services. 'Taxable Services' means the following:

"(1) Advertising in directories, shopper's guides, newspapers, and magazines, whether or not such publications are circulated free or without charge to the public; advertising on radio, movie, television, and outdoor signs; and point-of-purchase performance advertising;

Sec. 14. Article 20.02, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"Article 20.02. Imposition of Limited Sales Tax. There is hereby imposed a limited sales tax at the rate of two percent on the receipts from the sale at retail of all tangible personal property and taxable services within this state."

Sec. 15. Subsection (1), Section (B), Article 20.021, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(1) It is unlawful for any retailer to advertise or to hold out or to state to the public or to any customer, either directly or indirectly, that the tax or any part thereof will be assumed or absorbed by him or that any part of it will be refunded or that it will not be added to the selling price of the tangible personal property or taxable services sold. Provided, however, that this section does not prohibit any utility from billing its customers in one lump sum covering the utility sales price plus the tax imposed by this chapter."

Sec. 16. Section (F), Article 20.021, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, 1963, is amended to read as follows:

"(F) Presumption of Taxability: Resale Certificate. For the purpose of the proper administration of this Chapter and to prevent evasion of the limited sales tax it shall be presumed that all gross receipts are subject to the tax until the contrary is established.

"The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the tangible personal property is purchased for the purpose of reselling, leasing or renting it in the regular course of business or for the purpose of subsequently transferring it as an integral part of a taxable service rendered in the regular course of business."

Sec. 17. Section (G), Article 20.021, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, 1963, is amended to read as follows:

"(G) Effect of Resale Certificate. The resale certificate relieves the seller from the burden of proof only if taken in good faith from a person who is engaged in the business of selling, leasing or renting, tangible personal property or taxable services. A resale certificate may be given by a purchaser, who at the time of purchasing the tangible personal property, intends to sell, lease or rent it in the regular course of business, transfer it as an integral part of a taxable service in the regular course of business or is unable to ascertain at the time of purchase whether the tangible personal property will be resold, leased, rented, or transferred in the regular course of business or will be used for some other purpose."

Sec. 18. Subdivision (1), Section (H), Article 20.021, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(1) The certificate shall:

"(a) Be signed by and bear the name and address of the purchaser.

"(b) Indicate the number of the permit issued to the purchaser or

that an application for such permit is pending before the Comptroller.

"(c) Indicate the general character of the tangible personal property sold, leased or rented by the purchaser in the regular course of business, or transferred as an integral part of a taxable service rendered in the regular course of business."

Sec. 19. Section (I), Article 20.021, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(I) Liability of Purchaser Giving Resale Certificate. If a purchaser who gives a resale certificate makes any use of the tangible personal property other than retention, demonstration or display while holding it for sale, lease or rental in the regular course of business or for transfer as an integral part of a taxable service in the regular course of business the use shall be taxable to the purchaser as of the time when the tangible personal property is first so used, and the sales price of the tangible personal property to him shall be deemed the measure of the tax."

Sec. 20. Section (J), Article 20.021, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(J) Improper Use of Resale Certificate. Any person who gives a resale certificate to the seller for tangible personal property which he knows, at the time of purchase, is purchased for the purpose of use rather than for the purpose of resale, lease or rental by him in the regular course of business or for transfer by him as an integral part of a taxable service rendered in the regular course of business is guilty of a misdemeanor and shall upon conviction suffer the penalties set forth in Article 20.12(B) of this Chapter."

Sec. 21. Sections (G), (H), (I), and (J), or Article 20.03, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, are amended to read as follows:

"(G) Effect of Resale Certificate. The resale certificate relieves the seller from the burden of proof only if taken in good faith from a person

who is engaged in the business of selling tangible personal property or taxable services. A resale certificate may be given by a purchaser who, at the time of purchasing the tangible personal property, intends to sell, lease or rent it in the regular course of business, transfer it as an integral part of a taxable service rendered in the regular course of business or is unable to ascertain at the time of purchase whether the tangible personal property will be sold, leased or rented or will be used for some other purpose.

"(H) Form and Contents of Resale Certificate.

"(1) The Certificate shall:

"(a) Be signed and bear the name and address of the purchaser.

"(b) Indicate the number of the permit issued to the purchaser or that an application for such permit is pending before the Comptroller.

"(c) Indicate the general character of the tangible personal property sold, leased or rented by the purchaser in the regular course of business.

"(2) The certificate shall be substantially in such form as the Comptroller may prescribe.

"(I) Liability of Purchaser Giving Resale Certificate; Use of Article Bought for Resale. If a purchaser who gives a resale certificate makes any use of the tangible personal property other than retention, demonstration or display while holding it for sale, lease or rental, in the regular course of business, the use shall be taxable to the purchaser as of the time when the tangible personal property is first so used, and the sales price of the property to him shall be deemed the measure of the tax.

"(J) Improper Use of Resale Certificate. Any person who gives a resale certificate to the seller for tangible personal property which he knows, at the time of purchase, is purchased for the purpose of use rather than for the purpose of resale, lease or rental by him in the regular course of business is guilty of a misdemeanor and shall upon conviction suffer the penalties set forth in Article 20.12(B) of this Chapter."

Sec. 22. Article 20.04, Title 122A Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Chapter 464, Acts of the 60th Legislature, Regular Session, 1967, is amended to read as follows:

"Article 20.04. Exemptions.

"(A) 'Exempted from taxes imposed by this Chapter' means exempted from the computation of the amount of the taxes imposed.

"(B) Exemption Certificates. If a purchaser certifies in writing to a seller that the tangible personal property or taxable services purchased will be used in a manner or for a purpose entitling the seller to regard the receipts from the sale as exempted by this Chapter from the computation of the amount of the limited sales tax, and if the purchaser then uses the tangible personal property or taxable services in some other manner or for some other purpose, the purchaser shall be liable for payment of the limited sales tax as if he were a retailer making a retail sale of the tangible personal property or taxable services to him shall be deemed the receipts from such retail sale for the purpose of determining the amount of tax for which he is liable.

"Any person who gives an exemption certificate to the seller for tangible personal property or taxable services which he knows, at the time of purchase, will be used in a manner other than that expressed in the exemption certificate is guilty of a misdemeanor and shall upon conviction suffer the penalties set forth in Article 20.12(B) of this Chapter.

"(C) Constitution and Statutory Exemptions. There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of and the storage, use or other consumption in this state of tangible personal property and taxable services the gross receipts from the sale, lease or rental of which, or the storage, use or other consumption of which, this State is prohibited from taxing under the Constitution or laws of the United States.

"(D) Items Taxed Under Other Statutes.

"(1) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental, production or distribution or the storage, use or other consumption in this State of:

"(a) oil as taxed under the provisions of Chapter 4 of this Title;

"(b) sulphur as taxed under the provisions of Chapter 5 of this Title;

"(c) cigarettes as defined and taxed under the provisions of Chapter 7 of this Title;

"(d) cigars and tobacco products as defined and taxed under the provisions of Chapter 8 of this Title;

"(e) motor fuels as defined, taxed, or exempted under the provisions of Chapter 9 of this Title;

"(f) special fuels as defined, taxed or exempted under the provisions of Chapter 10 of this Title.

"(g) cement as taxed under the provisions of Chapter 18 of this Title; and

"(h) motor vehicles, trailers and semitrailers as defined and taxed under the provisions of Chapter 6 of this Title.

"(2) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, production, distribution or the storage, use or other consumption in this State of alcoholic beverages, including distilled spirits, beer, ale and wine, subject to a tax imposed by the Texas Liquor Control Act, as amended; except that any such alcoholic beverages shall be taxable when, and only when consumed with food as a part of a meal served on or off the premises of the vendor for consumption at tables, chairs or counters or from trays, glasses, dishes or other tableware provided by the vendor.

"(2) There are exempted from the taxes imposed by this Chapter the receipts from the sale, production, distribution, lease, or rental of and the storage, use or other consumption in this State of water.

"(E) Property Used in Manufacturing, Packaging and Containers.

"(1) Tangible Personal Property Used in Manufacturing. There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, and the storage, use or other consumption in this State of:

"(a) Tangible personal property which will enter into and become an ingredient or component part of tangible personal property manufactured, processed or fabricated for ultimate sale at retail within or without this State; and

"(b) Tangible personal property used or consumed in or during any phase of such actual manufacturing, processing or fabricating operation, provided that the use or consumption of such tangible personal property is necessary or essential to the performance of such operations. Chemicals, catalysts, and other materials which are used during such operations and which are used for the pur-

pose of producing or inducing a chemical or physical change during such operations or for removing impurities or otherwise placing a product in a more marketable condition are included within the exemption, as are other articles of tangible personal property used in such a manner as to be necessary or essential in the actual manufacturing, processing, or fabricating operations. The exemption provided herein does not include the following:

"(i) Machinery, equipment and replacement parts and accessories therefor, having a useful life when new in excess of six (6) months;

"(ii) Machinery, equipment, materials and supplies used in a manner that is merely incidental to the manufacturing, processing or fabricating operation such as intraplant transportation equipment, and maintenance and janitorial equipment and supplies.

"(iii) Hand tools such as hammers, wrenches, saws, etc.; and

"(iv) Tangible personal property used by a manufacturer, processor or fabricator in any activities other than the actual manufacturing, processing or fabricating operation such as office equipment and supplies, equipment and supplies used in selling or distributing activities, in research and development of new products, or in transportation activities.

"(2) Wrapping, Packing and Packaging Supplies.

"(a) There are exempted from the taxes imposed by this Chapter the receipts from sales of all internal and external wrapping, packing, and packaging supplies and materials to any person for use in wrapping, packing or packaging any tangible personal property for the purpose of expediting or furthering in any way the sale of that property.

"(b) For the purpose of this Section, wrapping, packing and packaging supplies shall include, but shall not be limited to:

"(1) Wrapping paper, wrapping twine, bags, cartons, crates, crating materials, tape, rope, labels, staples, glue and mailing tubes.

"(2) Property used inside a package in order to shape, form, preserve, stabilize or protect the contents, such as, but not limited to, excelsior, straw, cardboard fillers, separators, shredded paper, ice, dry ice, cotton batting, shirt boards, hay and laths.

"(3) Containers.

"(a) There are exempted from the

taxes imposed by this Chapter the receipts of sales, leases, or rentals of, and the storage, use or other consumption in this State of:

"(1) Nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container.

"(2) Containers when sold with the contents if the sale price of the contents is not required to be included in the measure of the taxes imposed by this Chapter.

"(3) Returnable containers when sold with the contents in connection with a retail sale of the contents, or when resold for refilling.

"(a) As used in this Article, the term 'returnable containers' means containers of a kind customarily returned by the buyer of the contents for re-use. All other containers are 'nonreturnable containers.'

"(F) Certain Meals and Food Products. There are exempted from the taxes imposed by this Chapter the receipts from the sale of, and the storage, use or other consumption in this State of:

"(1) Meals and food products (including soft drinks and candy) for human consumption served by public or private schools, school districts, student organizations, or Parent-Teacher Associations pursuant to an agreement with the proper school authorities, in an elementary or secondary school during the regular school day.

"(2) Meals and food products (including soft drinks and candy) for human consumption when sold by a church or at a function of said church.

"(3) Meals and food products (including soft drinks and candy) for human consumption when served to patients and inmates of hospitals and other institutions licensed by the State for the care of human beings.

"(G) Interstate Shipments.

"(1) Property Shipped Outside State Pursuant to Sales Contract; Delivery by Retailer. There are exempted from the taxes imposed by this Chapter receipts from any sale of tangible personal property which, pursuant to the contract of sale, is shipped to a point outside this State by the retailer by means of:

"(a) Facilities operated by the retailer.

"(b) Delivery by the retailer to a carrier for shipment to a consignee at such point; or

"(c) Delivery by the retailer to a customs broker or forwarding agent for shipment outside this State.

"(2) Common Carriers. There are exempted from the computation of the limited sales tax, the receipts from sales of tangible personal property to a common carrier, shipped by the seller via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this State and the tangible personal property is actually transported to the out-of-State destination for use by the carrier in the conduct of its business as a common carrier outside the State of Texas.

"(3) Special Use Tax Exemption. The use tax imposed herein shall not apply to:

"(a) The use, in this State, of tangible personal property which is acquired outside this State and which is moved into this State for use as a licensed and certified carrier of persons or property.

"(b) The temporary storage in this State of tangible personal property which is acquired outside this State and which, subsequent to being brought into this State and stored here temporarily, is used solely outside this State or is physically attached to or incorporated into other tangible personal property which is used solely outside this State.

"(c) The storage, use or consumption of tangible personal property which is acquired outside this State, the sale, lease or rental or the storage, use or consumption of which tangible personal property would be exempt from the limited sales or use tax were it purchased within this State.

"(d) The storage and use, in this State, of tangible personal property acquired outside this State for use as a repair or replacement part for and actually affixed in this State to a self-propelled vehicle which is a licensed and certificated common carrier of persons and property.

"(H) United States; Political Subdivisions; Religious, Eleemosynary Organizations. There are exempted from the computation of the amount of taxes imposed by this Chapter, the receipts from the sale, lease or rental of any tangible personal property or taxable services to, or the storage, use or other consumption of tangible

personal property or taxable services by:

"(1) The United States, its unincorporated agencies and instrumentalities.

"(2) Any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

"(3) The State of Texas, its unincorporated agencies and instrumentalities.

"(4) Any county, city, special district or other political subdivision of this State.

"(5) Any organization created for religious, educational, charitable or eleemosynary purposes, provided that no part of the net earnings of any such organization inures to the benefit of any private shareholder or individual.

"(6) Any contractor using and/or consuming tangible personal property in the performance of a written contract for the improvement of realty with any organization exempted in this section to the extent of the tangible personal property so used and/or consumed in the performance of such contract.

"(I) Occasional Sales. There are exempted from the taxes imposed by this Chapter the receipts from the occasional sales of tangible personal property and the storage, use or other consumption in this State of tangible personal property the transfer of which to the consumer constitutes an occasional sale or the transfer of which to the consumer is made by way of an occasional sale.

"(K) Use Tax: Reciprocal Credit for Similar Taxes Paid Elsewhere. There shall be allowed as a credit to any taxpayer against the use tax imposed by this Chapter upon any tangible personal property, the amount of any like tax paid by that taxpayer in another state, territory or possession of the United States of America with respect to the sale, purchase or use of such property; provided that such other states, territories, or possessions provide for a similar tax credit for taxpayers of this State.

"(L) Use Tax Inapplicable When Limited Sales Tax Applies or When Use Tax Previously Paid. The storage, use or other consumption in this State of tangible personal prop-

erty, the receipts from the sale, lease, rental or use of which are required to be included in the measure of the limited sales tax, or tangible personal property upon which a use tax has been paid by the taxpayer using said tangible personal property, is exempted from the use tax imposed by this Chapter.

"(M) Food and Food Products for Human Consumption. There are exempted from the taxes imposed by this Chapter the receipts from sales of, and the storage, use or other consumption of, food products for human consumption.

"(1) 'Food products' shall include, except as otherwise provided herein, but shall not be limited to, cereals and cereal products; milk and milk products, including ice cream; oleo-margarine; meat and meat products; poultry and poultry products; fish and fish products; eggs and egg products; vegetables and vegetable products; fruit and fruit products; spices, condiments and salt; sugar and sugar products; coffee and coffee substitutes; tea, cocoa products; or any combination of the above.

"(2) 'Food products' shall not include:

"(a) Medicines, tonics, vitamins and medicinal preparations in any form;

"(b) Carbonated and noncarbonated packaged soft drinks and diluted juices where sold in liquid or frozen form; and ice and candy.

"(c) Foods and drinks (which include meals, milk and milk products, fruits and fruit products, sandwiches, salads, processed meats and seafoods, vegetable juices, ice cream in cones or small cups) served, prepared or sold ready for immediate consumption in or by restaurants, drug stores, lunch counters, cafeterias, hotels or like places of business or sold ready for immediate consumption from push carts, motor vehicles, or any other form of vehicle. Provided, however, that food and drinks purchased by a common carrier for the purpose of serving passengers traveling en route aboard such carriers shall be exempt.

"(d) Alcoholic beverages of all types served or sold in any form, and any ingredients served or sold, mixed, or to be mixed, with alcoholic beverages.

"(N) Drugs, Medicines, Prosthetic Devices. There are exempted from

the taxes imposed by this Chapter the receipts from sales of, and the storage, use or other consumption of insulin and of drugs and medicines including alcohol when prescribed or dispensed for humans or animals by a licensed practitioner of the healing arts. There are also exempted from the taxes imposed by this Chapter, the receipts from sales of and the storage, use or other consumption of braces, spectacles, hearing aids, orthopedic and dental prosthetic appliances, and replacement parts designed specifically for such products.

"(O) Animal Life; Feed; Seeds; Plants; Fertilizer. There are exempted from the taxes imposed by this Chapter the receipts from sales of, and the storage, use or other consumption of:

"(1) Any form of animal life of a kind the products of which ordinarily constitute food for human consumption. Horses, mules and similar work animals used on farms and ranches.

"(2) Feed for farm and ranch animals and for animals which are held for sale in the regular course of business.

"(3) Seeds and annual plants the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business.

"(4) Fungicides, insecticides, herbicides, defoliants and desiccants exclusively used or employed on farms or ranches in the production of food for human consumption, feed or any form of animal life, or other agricultural products to be sold in the regular course of business.

"(5) Fertilizer.

"(6) Farm machinery or equipment exclusively used or employed on farms or ranches in the production of food for human consumption, feed for any form of animal life, or other agricultural products to be sold in the regular course of business.

"(P) Sale for Resale: Leasing or Renting.

"(1) There are exempted from the taxes imposed by this Chapter the receipts from all sales for resale, leasing or renting.

"(2) However, if a person purchases tangible personal property for the purpose of leasing or renting it to another person, and if he later sells it by means of an occasional sale before he has collected and paid

to this State as much tax on the rental or lease charges as would have been due and payable to this State had he not purchased the tangible personal property for the purpose of so renting and leasing it, he shall, at the time of his occasional sale of said tangible personal property include in his receipts from taxable sales the amount by which his purchase price exceeded the amount of rents collected by him on said tangible personal property.

"(3) When a lessor makes a retail sale of leased tangible personal property to a lessee of that tangible personal property under an agreement whereby certain rental payments are credited against the purchase price of that tangible personal property, he need not collect or pay any tax on the sale price to the extent that he has collected and paid on such rental payments.

"(Q) Vessels.

"(1) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, or the storage, use or other consumption in this State of materials, equipment and machinery which enter into and become component parts of ships, vessels, including commercial fishing vessels, or barges, of fifty (50) tons displacement and over, built in this State, and the receipts from the sale of such ships, vessels, or barges when sold by the builder thereof.

"(2) The taxes imposed by this Chapter shall not apply to the receipts from the sale, lease or rental of, or the storage, use or other consumption in this State of materials and supplies purchased by the owners or operators of ships or vessels operating exclusively in foreign or interstate coastwise commerce, where such materials and supplies are loaded upon the ship or vessel for use or consumption in the maintenance and operation thereof; or to materials and supplies used in the repair of such ships and vessels where such materials and supplies enter into and become a component part of such ships or vessels.

"(3) The taxes imposed by this Chapter shall not apply to the receipts from the sale, lease or rental of, or the storage, use or other consumption in this State of drilling equipment used in the exploration for or production of oil, gas, sulphur, or other minerals when such equipment

is built for exclusive use outside the boundaries of the State and is removed forthwith from the State upon completion.

"(R) Certain Aircraft. There are exempted from the taxes imposed by this Chapter the receipts from the sale, use, storage, lease or other consumption of aircraft sold to persons using such aircraft as certificated or licensed carriers of persons or property, or sold to any foreign government or sold to persons who are not residents of this State.

"(S) Gas and Electricity. There are exempted from the taxes imposed by this Chapter the sale, production, distribution, lease or rental of and the storage, use or other consumption in this State of gas and electricity except when sold for residential use or commercial use.

"For the purpose of this Subsection, the terms 'residential use' and 'commercial use' shall have the following meanings:

"'Residential use' means use in a family dwelling or building or portion thereof occupied as the home, residence, or sleeping place of one or more persons.

"'Commercial use' means use by persons engaged in selling, warehousing or distributing a commodity or service, either professional or personal.

"The term 'commercial use' specifically does not include use by persons engaged in: (1) processing tangible personal property for sale as tangible personal property; (2) exploration for or production and transportation of a material extracted from the earth; (3) agriculture, including dairy or poultry operations and pumping water for farm and ranch irrigation; or, (4) electrical processes such as electroplating, electrolysis and cathodic protection.

"(T) Rolling Stock. There are exempted from the taxes imposed by this Chapter receipts from any sale, use, storage or other consumption of locomotives and rolling stock, including fuel or supplies essential to the operation of locomotives and trains.

"(U) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, and the storage, use or other consumption in this State of books consisting wholly of writings sacred to any religious faith and religious periodicals published or distributed by

any religious faith consisting wholly of writing promulgating the teachings of such faith.

"(V) Vending Machine Sales. (1) There are exempted from the taxes imposed by this Chapter the receipts from the sale of tangible personal property when sold through a coin-operated vending machine for a total consideration of twenty-four cents (24¢) or less.

"(2) There are exempted from the taxes imposed by this Chapter the receipts from the sale of telephone and telegraph service paid for by inserting coins in coin-operated telephones.

"(W) Transfers Without Substantial Change in Ownership. There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, and the storage, use or other consumption in this State, pursuant to the terms of a good faith bona fide contractual relationship, of an interest in tangible personal property to a partner, co-owner or other person who before or after such a sale owns a joint or undivided interest (with the seller) in such tangible personal property where the Texas Limited Sales, Excise and Use Tax has previously been paid on such tangible personal property.

"(X) Casing, drill pipe, tubing, and other pipe. There are exempted from the taxes imposed by this Chapter, the receipts from the sale, lease, or rental in this State of casing, drill pipe, tubing, and other pipe to be used in exploration for or production of oil, gas, sulphur, and other minerals offshore outside the territorial limits of the state.

"(Y) Property for use in offshore exploration and production. (a) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental in this State of tangible personal property for use exclusively in the exploration for or the production of oil, gas, sulphur, or other minerals offshore and outside the territorial limits of the State.

"(b) The property described in Subdivision (a) of this section may be delivered to the purchaser or lessee in this State and removed by means of his own facilities or by any other means beyond the territorial limits of the State.

"(c) Receipts from the sale, lease or rental of property described in

Subdivision (a) of this section are exempt when the property is shipped to any place in the State for further assembly or fabrication, and receipts from the sale, lease or rental of such property made upon completion of the assembly or fabrication are exempt if the property is forthwith removed beyond the territorial limits of the State."

Sec. 23. Section (B), Article 20.05, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(B) Method Retailer is to Use in Computing Tax. The limited sales tax levied under Article 20.02 shall be computed and paid to the Comptroller on the basis of three percent of all receipts from the total sales of taxable tangible personal property and taxable services sold by the retailer; provided any retailer who can establish to the satisfaction of the Comptroller that fifty per cent (50%) or more of his receipts from the sale of tangible personal property and taxable services arise from individual transactions where the total sales price is twenty-four cents (24¢) or less may exclude the receipts from such sales when reporting and paying the tax imposed by Article 20.02 of this Chapter. No retailer shall avail himself of this provision without prior written approval of the Comptroller. The Comptroller shall grant such approval when he is satisfied that the retailer qualifies on the basis set forth in this Section and when the retailer has submitted satisfactory evidence that he can and will maintain records adequate to substantiate the exclusion herein authorized. Any attempt on the part of any retailer to exercise this provision without prior written approval of the Comptroller shall be deemed to be a failure and refusal to pay the Limited Sales, Excise and Use Tax and the retailer shall be subject to assessment for back taxes, penalties and interest as provided for in this Chapter."

Sec. 24. Section (J), Article 20.05, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(J) Commingled Tax and Receipts. Any retailer who established

an accounting system under which the amount of tax collected pursuant to this Chapter is commingled with the receipts from the sale of tangible personal property or taxable services may determine taxable receipts in the following manner:

"(1) He shall subtract from his total receipts the receipts from any sales which are specifically exempt from or otherwise excluded from the tax imposed by this Chapter. The remainder shall consist of the receipts from the sale of taxable tangible personal property or services plus the tax collected pursuant to the provisions of this Chapter.

"(2) This remainder shall then be divided by 1.02. The answer resulting shall be the taxable gross receipts of the retailer for reporting purposes as prescribed by Section (B) of this Article.

"The sole purpose of this Section is to permit the widest possible latitude in the internal accounting system of retailers and to avoid requiring certain retailers to remit to the State a tax computed upon a base which already includes the tax imposed by this Chapter. Nothing herein shall be construed to relieve the retailer of the obligation and duty of collecting the tax in the specific manner prescribed by Article 20.021 of this Chapter."

Sec. 25. Section (K), Article 20.05, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(K) Direct Payment Procedure Authorized. The Comptroller shall establish a system of direct payment which shall be applicable to those consumers who meet the qualifications set forth in this Section and who, after approval by the Comptroller, are issued a direct payment permit. The holder of a direct payment permit may issue to all of the vendors or sellers from whom purchases of tangible personal property or taxable services are made a blanket exemption certificate covering all future purchases made by the direct payment permit holder and such certificate shall show the number of the direct payment permit and shall specify that the direct payment permit holder agrees to accrue and pay to the State of Texas all taxes which

are or may in the future be due on tangible personal property or taxable services purchased pursuant to exemption certificate.

"(1) Direct payment permits may be issued by the Comptroller after receipts of a written application for such a permit. The application shall be accompanied by:

"(a) Records establishing the fact that the applicant is a responsible person annually purchasing tangible personal property having a value when purchased equal to or in excess of Two Hundred Thousand Dollars (\$200,000) exclusive of any purchase for which a resale certificate authorized by Article 20.021 (F) of this Chapter can be or could have been issued.

"(b) A description, in such detail as the Comptroller may require, of the accounting methods by which the applicant proposes to differentiate between taxable and exempt purchases.

"(c) An agreement, in a form prescribed by the Comptroller and signed by the applicant or, if a corporation, by a responsible officer thereof, under which the applicant agrees to accrue and pay all taxes imposed by Article 20.03 of this Chapter on all purchases not specifically exempted by Article 20.04 of this Chapter. The agreement shall stipulate that the applicant agrees to remit the taxes due quarterly on or before the last day of the month next succeeding each quarterly period. Such agreement shall also stipulate that the applicant agrees to waive any claim for the discount authorized by Article 20.05 (E) of this Chapter on any tax paid by him pursuant to a direct payment permit, provided, however, that if the applicant holds a valid seller's permit issued under the provisions of Article 20.021 (C) of this Chapter he shall continue to be entitled to claim the discounts authorized on sales made pursuant to such seller's permit.

"(2) A direct payment permit shall be issued to any applicant who meets, to the satisfaction of the Comptroller, the qualifications set forth in Subsection (1) of this Section. The Comptroller shall be the sole judge of whether such qualifications have been met and refusal by the Comptroller to issue a direct payment permit shall not be appealable. Any applicant may, however, request an opportunity to submit an amended application or if denied a direct payment permit, after a reasonable length of time, he may submit a new application.

"(3) Persons holding direct payment permits hold them as a matter of revocable privilege and not as a matter of right and the Comptroller may, upon his own initiative and with reasonable notice, cancel any direct payment permit. A cancellation shall not be appealable. The Comptroller shall notify a direct payment permit holder that his permit has been cancelled by registered mail and, immediately upon receipt of such notification, the direct payment permit holder shall contact all of the vendors or sellers from whom purchases of tangible personal property or taxable services are made and notify them that the exemption certificates issued to them pursuant to the direct payment permit are no longer valid. Failure of a person to so notify the vendors or sellers from whom purchases of tangible personal property or taxable services are made of the cancellation of a direct payment permit shall be considered as a failure and refusal to pay the Limited Sales, Excise and Use Tax by the person required to issue such notices.

"(4) Any direct payment permit holder may voluntarily relinquish such permit by notifying the Comptroller of his desire to relinquish such permit. Such voluntary relinquishment of a direct payment permit shall not be effective until a termination notice is issued by the Comptroller. Immediately upon receipt of the Comptroller's termination notice, the direct payment permit holder shall contact all of the vendors or sellers from whom purchases of tangible personal property or taxable services are made and notify them that the exemption certificates issued to them pursuant to the direct payment permit are no longer valid. Failure of a person to so notify the vendors or sellers from whom purchases of tangible personal property or taxable services are made of the voluntary relinquishment of the direct payment permit shall be considered as a failure and refusal to pay the Limited Sales, Excise and Use Tax by the person required to issue such notice."

Sec. 26. Section (C), Article 20.11, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(C) Records to be Kept by Sellers, Retailers and Others.

"(1) Every seller, every retailer, and every person storing, using or otherwise consuming in this State tangible personal property purchased from a retailer shall keep such records, receipts, invoices and other pertinent papers in such form as the Comptroller may reasonably require.

"(2) Every such seller, retailer or person shall keep such records for not less than four (4) years from the making of such records unless the Comptroller in writing sooner authorizes their destruction."

Sec. 27. Subsection B, Section 2, Chapter 36, Acts of the 60th Legislature, Regular Session, 1967 (Article 1066c, Vernon's Texas Civil Statutes), is amended to read as follows:

"B. The sales tax portion of any local sales and use tax adopted under this Section is hereby imposed at the rate of one percent (1%) on the receipts from the sale at retail of all tangible personal property and taxable services within any city adopting such tax which property or services is subject to taxation by the State of Texas under the provisions of the Limited Sales, Excise and Use Tax Act, as enacted, and as heretofore or hereafter amended."

Sec. 28. Subdivision (2), Subsection K, Section 2, Chapter 36, Acts of the 60th Legislature, Regular Session, 1967 (Article 1066c, Vernon's Texas Civil Statutes), is amended to read as follows:

"(2) When such Limited Sales, Excise and Use Tax imposed by the State of Texas shall be at the rate of two percent (2%) on the receipts from the sale at retail of all tangible personal property or taxable services within this State which is subject to such tax, and the Local Sales and Use Tax imposed in any city under authority of this Act shall be at the rate of one percent (1%) on the receipts from the sale of all tangible personal property or taxable services within such city which is subject to such tax, the total gross rate of such combined taxes in such city shall be at the rate of three percent (3%) on the receipts from the sale of all tangible personal property or taxable services within such city which is subject to such taxes. When the sale price shall involve a fraction of a dollar, the taxes shall be added to the sale price upon the following schedule:

Amount of Sale	Tax
\$.01 to \$.16	No Tax
.17 to .49	\$.01
.50 to .83	.02
.84 to 1.16	.03
1.17 to 1.49	.04
1.50 to 1.83	.05

Provided that for successive brackets for this schedule in this paragraph, the tax shall be computed by multiplying four per cent (4%) times the amount of the sale. Any fraction of one cent (\$.01) which is less than one half of one cent (\$.005) of tax shall not be collected. Any fraction of one cent (\$.01) of tax equal to one half of one cent (\$.005) or more shall be collected as a whole cent (\$.01) of tax."

Sec. 29. Section 5, Chapter 36, Acts of the 60th Legislature, Regular Session, 1967 (Article 1066c, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 5. On and after the effective date of any tax imposed under the provisions of this Act, the Comptroller shall perform all functions incident to the administration, collection, enforcement, and operation of the tax, and the Comptroller shall collect, in addition to the Limited Sales, Excise and Use Tax for the State of Texas, an additional tax under the authority of this Act of one percent (1%) on the receipts from the sale at retail or on the sale price or lease or rental price on the storage, use, or other consumption of all tangible personal property or taxable services within such city which property is subject to the State Limited Sales, Excise and Use Tax Act. The tax imposed hereunder and the tax imposed under the Limited Sales, Excise and Use Tax Act shall be collected together and reported upon such forms and under such administrative rules and regulations as may be prescribed by the Comptroller. On and after the effective date of any proposition to abolish such local sales and use tax in any city, the Comptroller shall comply therewith as provided in this Act."

Sec. 30. Subdivision 1, Subsection B, Section 6, Chapter 36, Acts of the 60th Legislature, Regular Session, 1967 (Article 1066c, Vernon's Texas Civil Statutes), is amended to read as follows:

"B. (1) For the purposes of the local sales tax imposed by this Act, all retail sales, leases and rentals,

except sales of natural gas or electricity are consummated at the place of business of the retailer unless the tangible personal property sold, leased, or rented is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination or the taxable service is to be performed at an out-of-state location. In the event the retailer has no permanent place of business in the State, the place or places at which the retail sales, leases, or rentals are consummated for the purpose of the tax imposed by this Act shall be determined under rules and regulations prescribed by the Comptroller. If the retailer has more than one place of business in the State, the place or places at which retail sales, leases, and rentals are consummated shall be the retailer's place or places where the purchaser or lessee takes possession and removes from the retailer's premises the articles of tangible personal property, or if the retailer delivers the tangible personal property to a point designated by the purchaser or lessee, then the sales, leases, or rentals are consummated at the retailer's place or places of business from which tangible personal property is delivered to the purchaser or lessee. The sale of natural gas or electricity is consummated at the point of delivery to the consumer.

Sec. 31. Subsection C, Section 6, Chapter 36, Acts of the 60th Legislature, Regular Session, 1967 (Article 1066c, Vernon's Texas Civil Statutes), is amended to read as follows:

"C. (1) All exemptions granted to agencies of government, organizations, persons, and to the sale, storage, use, and other consumption of certain articles and items of tangible personal property under the provisions of Article 20.04, Chapter 20, Title 122A, are hereby made applicable to the imposition and collection of the tax imposed by this Act.

"(2) The receipts from the sale, use or rental of and the storage, use or consumption in this state, of tangible personal property are exempt from the tax imposed by this Act, if:

"(a) The property is used for the performance of a written contract entered into prior to the date this Act takes effect in any city which may affect the contract, if the contract is not subject to change or modification by reason of the tax; or

"(b) The property is used pursuant to an obligation of a bid or bids submitted prior to the date this Act takes effect in any city which may affect the contract, if the bid or bids may not be withdrawn, modified or changed by reason of the tax imposed by this Act; and

"(c) If notice of a contract or bid on which an exemption is to be claimed is given by the taxpayer to the Comptroller within sixty days from the date this Act takes effect in any city which may effect the bid or contract.

"The exemption provided by this Subsection shall have no effect after three years from the date this Act takes effect in any city."

Sec. 32. This Act shall take effect October 1, 1968.

Sec. 33. The fact that the State of Texas needs additional revenue to implement and operate essential existing programs creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and this Rule is hereby suspended, and that this Act take effect and be in force from and after October 1, 1968, and it is so enacted.

The amendment was read.

Senator Hardeman moved to table the amendment.

Question on the motion to table, "Yeas" and "Nays" were demanded.

The motion to table prevailed by the following vote:

Yeas—18

Aikin	Harris
Bates	Herring
Berry	Hightower
Blanchard	Moore
Christie	Patman
Cole	Ratliff
Creighton	Reagan
Hall	Wade
Hardeman	Watson

Nays—12

Bernal	Kennard
Brooks	Mauzy
Connally	Schwartz
Grover	Strong
Harrington	Wilson
Jordan	Word

Absent

Hazlewood

Senator Harris offered the following amendment to the bill:

Amend House Bill No. 2 by striking all below the enacting clause and substituting the following:

Section 1. Article 20.04, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as last amended by Chapter 464, Acts of the 60th Legislature, Regular Session, 1967, is amended to read as follows:

"Art. 20.04. Exemptions.

"(A) 'Exempted from taxes imposed by this Chapter,' as used herein, means exempted from the computation of the amount of the taxes imposed.

"(B) Exemption Certificates. If a purchaser certifies in writing to a seller that the tangible personal property purchased will be used in a manner or for a purpose entitling the seller to regard the receipts from the sale as exempted by this Chapter from the computation of the amount of the limited sales tax, and if the purchaser then uses the tangible personal property in some other manner or for some other purpose, the purchaser shall be liable for payment of the limited sales tax as if he were a retailer making a retail sale of the tangible personal property at the time of such use, and the cost of the tangible personal property to him shall be deemed the receipts from such retail sale for the purpose of determining the amount of tax for which he is liable.

"Any person who gives an exemption certificate to the seller for tangible personal property which he knows, at the time of purchase, will be used in a manner other than that expressed in the exemption certificate is guilty of a misdemeanor and shall upon conviction suffer the penalties set forth in Article 20.12(B) of this Chapter.

"(C) Constitution and Statutory Exemptions. There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of and the storage, use or other consumption in this State of tangible personal property the gross receipts from the sale, lease or rental of which, or the storage, use or other consumption of which, this State is

prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this State.

"(D) Motor Vehicles Exempted. There are exempted from the taxes imposed by this Chapter the receipts from the sale, rental or lease, production or distribution or the storage, use or other consumption in this State of motor vehicles, trailers and semi-trailers as defined and taxed under the provisions of Chapter 6 of this Title.

"(E) Written Contracts and Bids. The receipts from the sale, use or rental of, and the storage, use or other consumption in this State, of tangible personal property, the exemption of which is removed by this amendment, are exempt if:

"(1) The property is used for the performance of a written contract entered into prior to the effective date of this amendment if the contract is not subject to change or modification by reason of the tax; or

"(2) The property is used pursuant to an obligation of a bid or bids submitted prior to the effective date of this amendment which may not be withdrawn, modified or changed by reason of the tax imposed by this amendment; and

"(3) If notice of a contract or bid on which an exemption is to be claimed is given by the taxpayer to the Comptroller within sixty days from the effective date of this amendment.

"The exemption provided by this section shall have no effect after August 31, 1971, and all receipts otherwise taxable shall be taxed after that date.

"(F) Use Tax: Reciprocal Credit for Similar Taxes Paid Elsewhere. There shall be allowed as a credit to any taxpayer against the use tax imposed by this Chapter upon any tangible personal property, the amount of any like tax paid by that taxpayer in another state, territory or possession of the United States of America with respect to the sale, purchase or use of such property; provided that such other states, territories, or possessions provide for a similar tax credit for taxpayers of this State.

"(G) Use Tax Inapplicable When Limited Sales Tax Applies or When Use Tax Previously Paid. The storage, use or other consumption in this

State of tangible personal property, the receipts from the sale, lease, rental or use of which are required to be included in the measure of the limited sales tax, or tangible personal property upon which a use tax has been paid by the taxpayer using said tangible personal property, is exempted from the use tax imposed by this Chapter.

"(H) Food and Food Products for Human Consumption. There are exempted from the taxes imposed by this chapter the receipts from sales of, and the storage, use or other consumption of, food products for human consumption.

"(1) 'Food products' shall include, except as otherwise provided herein, but shall not be limited to, cereals and cereal products; milk and milk products, including ice cream; oleo-margarine; meat and meat products; poultry and poultry products; fish and fish products; eggs and egg products; vegetables and vegetable products; fruit and fruit products; spices, condiments and salt; sugar and sugar products; coffee and coffee substitutes; tea, cocoa products; or any combination of the above.

"(2) 'Food products' shall not include:

"(a) Medicines, tonics, vitamins and medicinal preparations in any form;

"(b) Foods and drinks (which include meals, milk and milk products, fruits and fruit products, sandwiches, salads, processed meats and seafoods, vegetable juices, ice cream in cones or small cups) served, prepared or sold ready for immediate consumption in or by restaurants, drug stores, lunch counters, cafeterias, hotels or like places of business or sold ready for immediate consumption from push carts, motor vehicles, or any other form of vehicle. Provided, however, that food and drinks purchased by a common carrier for the purpose of serving passengers traveling en route aboard such carriers shall be exempt.

"(I) Drugs, Medicines, Prosthetic Devices. There are exempted from the taxes imposed by this Chapter the receipts from sales of, and the storage, use or other consumption of insulin and of drugs and medicines when prescribed or dispensed for humans or animals by a licensed practitioner of the healing arts. There are also exempted from the taxes imposed by this Chapter, the receipts from sales of and the storage, use or other consumption of braces, spectacles,

hearing aids, orthopedic and dental prosthetic appliances, and replacement parts designed specifically for such products."

Sec. 2. Subsection C, Section 6, Chapter 36, Acts of the 60th Legislature, Regular Session, 1967 (Article 1066c, Vernon's Texas Civil Statutes), is amended to read as follows:

"C. (1) All exemptions granted to agencies of government, organizations, persons, and to the sale, storage, use, and other consumption of certain articles and items of tangible personal property under the provisions of Article 20.04, Chapter 20, Title 122A, are hereby made applicable to the imposition and collection of the tax imposed by this Act.

"(2) The receipts from the sale, use or rental of and the storage, use or consumption in this state, of tangible personal property are exempt from the tax imposed by this Act, if:

"(a) the property is used for the performance of a written contract entered into prior to the date this Act takes effect in any city which may affect the contract, if the contract is not subject to change or modification by reason of the tax; or

"(b) the property is used pursuant to an obligation of a bid or bids submitted prior to the date this Act takes effect in any city which may affect the contract, if the bid or bids may not be withdrawn, modified or changed by reason of the tax imposed by this Act; and

"(c) if notice of a contract or bid on which an exemption is to be claimed is given by the taxpayer to the Comptroller within sixty days from the date this Act takes effect in any city which may affect the bid or contract.

"The exemption provided by this Subsection shall have no effect after three years from the date this Act takes effect in any city."

Sec. 3. Emergency. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and this Rule is hereby suspended."

The amendment was read.

Senator Hardeman moved to table the amendment.

Question on the motion to table, "Yeas" and "Nays" were demanded.

The motion to table prevailed by the following vote:

Yeas—17

Aikin	Herring
Bates	Hightower
Berry	Moore
Blanchard	Patman
Connally	Ratliff
Creighton	Reagan
Hall	Watson
Hardeman	Word
Hazlewood	

Nays—14

Bernal	Jordan
Brooks	Kennard
Christie	Mauzy
Cole	Schwartz
Grover	Strong
Harrington	Wade
Harris	Wilson

Senator Jordan moved to reconsider the vote by which Committee Amendment No. 1 to H. B. No. 2 was adopted.

The motion prevailed.

Question—Shall Committee Amendment No. 1 to S. B. No. 2 be adopted?

Motion to Adjourn

Senator Patman moved that the Senate stand adjourned until 10:00 o'clock a.m. tomorrow.

Question on the motion to adjourn, "Yeas" and "Nays" were demanded.

The motion to adjourn was lost by the following vote:

Yeas—9

Bernal	Moore
Blanchard	Patman
Grover	Schwartz
Kennard	Wilson
Mauzy	

Nays—22

Aikin	Hardeman
Bates	Harrington
Berry	Harris
Brooks	Hazlewood
Christie	Herring
Cole	Hightower
Connally	Jordan
Creighton	Ratliff
Hall	Reagan

**Strong
Wade**

**Watson
Word**

House Bill 2 on Second Reading

The Senate resumed the consideration of the pending business, same being H. B. No. 2 with Committee Amendment No. 1 pending.

Question: Shall Committee Amendment No. 1 be adopted?

Senator Schwartz offered the following substitute for Committee Amendment No. 1:

Amend Committee Amendment No. 1 by striking same and substituting the following:

Sec. 10. This Act takes effect January 1, 1969, except as to the provisions contained in Sections 1, 2 and 3 pertaining to the Corporation Franchise Tax which take effect October 1, 1968.

The substitute for Committee Amendment No. 1 was read and was adopted.

Record of Vote

Senator Hall asked to be recorded as voting "Nay" on the adoption of the Substitute for the Committee Amendment.

The Committee Amendment as substituted was then adopted.

Record of Vote

Senator Patman asked to be recorded as voting "Nay" on the adoption of the Committee Amendment as substituted.

Senator Harris offered the following amendment to the bill:

Amend H. B. No. 2 by adding a new section to be numbered 9a and to read as follows:

"This act hereby repeals Sec. (M) subsection (6) of Art. 20.04 of Title 122A Taxation—General, R.C.S. of Texas, 1925."

**HARRIS
WILSON
KENNARD**

The amendment was read.

On motion of Senator Blanchard, the amendment was tabled.

Senator Hightower offered the following amendment to the bill:

Amend Section 2 of House Bill 2, proposing amendment of Article 20.021, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as heretofore amended by Section 1, Chapter 138, Acts of the 58th Legislature, 1963, by inserting between the first and second sentences of Subparagraphs (A), as therein proposed to be amended, the following:

"It is further specified that where tangible personal property is segregated in contemplation of transfer of title or possession and is thereafter to be transported by common carrier from the seller to the buyer, with the price fixed F.O.B. the seller's place of business, and with transportation charges separately stated, the tax herein imposed shall be computed only upon the basis of the charge for the tangible personal property itself, exclusive of the separately stated and independently fixed transportation charges."

The amendment was read and was adopted.

Record of Vote

Senator Mauzy asked to be recorded as voting "Nay" on the adoption of the above amendment.

Senator Hightower offered the following amendment to the bill:

Amend House Bill No. 2 by adding a new section appropriately numbered and renumbering existing sections as necessary, the new section to read as follows:

Sec. —. Subsection (M), Article 20.04, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"(M) Animal Life; Feed; Seeds; Plants; Fertilizer. There are exempted from the taxes imposed by this Chapter the receipts from sales of, and the storage, use or other consumption of:

"(1) Any form of animal life of a kind, the products of which ordinarily constitute food for human consumption. Horses, mules and work animals.

"(2) Feed for farm and ranch animals and for animals which are held for sale in the regular course of business.

"(3) Seeds and annual plants the products of which ordinarily consti-

tute food for human consumption or are to be sold in the regular course of business.

"(4) Fungicides, insecticides, herbicides, defoliants and desiccants exclusively used or employed on farms or ranches in the production of food for human consumption, feed for any form of animal life, or other agricultural products to be sold in the regular course of business.

"(5) Fertilizer.

"(6) Machinery or equipment exclusively used or employed on farms or ranches in the production of food for human consumption, production of grass, the building or maintaining of roads and water facilities, feed for any form of animal life, or other agricultural products to be sold in the regular course of business."

The amendment was read and was adopted.

On motion of Senator Hardeman and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

Question on the passage of H. B. No. 2 to third reading, "Yeas" and "Nays" were demanded.

The bill (H. B. No. 2) failed to pass to third reading by the following vote:

Yeas—13

Aikin	Moore
Cole	Ratliff
Creighton	Reagan
Hardeman	Wade
Hazlewood	Watson
Herring	Word
Hightower	

Yeas—18

Bates	Harrington
Bernal	Harris
Berry	Jordan
Blanchard	Kennard
Brooks	Mauzy
Christie	Patman
Connally	Schwartz
Grover	Strong
Hall	Wilson

Senate Resolution 157

Senator Word by unanimous consent offered the following resolution:

Whereas, The Vocational Agriculture Teachers Association of Texas

have the honor of hosting the Region II National Vocational Agriculture Teachers Association Leadership Conference; and

Whereas, This conference will be held in Fredericksburg, Texas on June 27-28, 1968, and vocational agriculture teachers from Arkansas, Colorado, Kansas, Louisiana, Oklahoma, New Mexico, and Texas will attend; and

Whereas, These outstanding teachers work with the Future Farmers of America organization, with young farmers, and with adult farmers across our nation to continue the improvement of education and to aid in the growth of agriculture; now, therefore, be it

Resolved, That the Senate of the State of Texas commend these teachers for the aid they give to the Vocational Agricultural System in meeting the ever-increasing agricultural challenges faced by a growing nation such as ours; and, be it further

Resolved, That the Senate of the State of Texas present an official copy of this Resolution to the Vocational Agriculture Teachers Association of Texas as an expression of the Senate's appreciation for their accomplishments.

The resolution was read and was adopted.

Report of Standing Committee

Senator Hall by unanimous consent submitted the following report:

Austin, Texas,
June 26, 1968.

Hon. Preston Smith, President of the Senate.

Sir: We, your Committee on Counties, Cities and Towns to which was referred S. B. No. 10, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

HALL, Chairman.

WORD

CHRISTIE

Memorial Resolutions

S. R. No. 144—By Senator Hazlewood: Memorial resolution for Earl Clayton.

S. R. No. 145—By Senator Hazlewood: Memorial resolution for Thomas Hyde Knighton.

S. R. No. 146—By Senator Hazlewood: Memorial resolution for Mrs. Maggie Marie Weatherly.

Welcome and Congratulatory Resolutions

S. R. No. 142—By Senator Watson: Extending welcome to Sponsors and Students of "Catch Up" program of G. L. Wylie Junior High School of Waco.

S. R. No. 143—By Senator Watson: Extending welcome and privileges of the floor for the day to Mr. and Mrs. John Faulkner.

S. R. No. 147—By Senator Watson: Extending welcome and privileges of the floor for the day to Fred W. Britt.

S. R. No. 148—By Senator Wilson: Extending welcome and privileges of the floor for the day to Julian Zimmerman.

S. R. No. 149—By Senator Watson: Extending welcome to N. L. Douglas.

S. R. No. 150—By Senator Watson: Extending welcome and privileges of the floor for the day to Frank Tucker.

S. R. No. 151—By Senator Watson: Extending welcome and privileges of the floor for the day to Travis McLinton.

S. R. No. 152—By Senator Watson: Extending welcome to Bobby Donaldson and Lane Denton.

S. R. No. 153—By Senator Watson: Extending welcome to Abe Susman.

S. R. No. 154—By Senator Watson: Extending welcome to Tom Truman.

S. R. No. 155—By Senator Watson: Extending welcome to Howard Crisco and Jim Knight.

S. R. No. 156—By Senator Aikin: Extending welcome to and privileges of the floor for the day to James Detheridge, et al.

Adjournment

On motion of Senator Aikin the Senate at 6:21 o'clock p.m. adjourned until 10:30 o'clock a.m. tomorrow.

APPENDIX

Sent To Governor

June 26, 1969

S. C. R. No. 14

S. C. R. No. 16

In Memory of
William Sherman Drake, Jr.

Senator Herring offered the following resolution:

(Senate Resolution 141)

Whereas, In the passing of William Sherman Drake, Jr., on July 15, 1967, the City of Austin lost an outstanding civic leader and prominent businessman; and

Whereas, For thirty-three years Mr. Drake was president of Calcasieu Lumber Company, a firm begun by his father in 1883, and was active in the business community; he was a director of the American National Bank and a vice president of the Board of Mutual Savings Institution; and

Whereas, Upon the insistence of his friends he became a candidate for City Council, was elected, and served two years as Mayor Pro Tem and as Mayor of Austin in 1951 and 1952, in which capacity he concentrated his efforts on solving the increasing traffic problems of the fast-growing Capital City. He was instrumental in establishing the pattern of one-way streets in downtown Austin, and it was during his tenure that the bridge linking South First Street with Guadalupe and Lavaca Streets, and which bears his name, was constructed; and

Whereas, Mr. Drake was a man who shared his experience, his good judgment and sound advice in the interest of the city he loved and worked for, and gave unsparingly of his time in all phases of community development; and

Whereas, He is survived by his wife, the former Eleanor Critchlow of Austin; four daughters, Mrs. J. T. McRee, Mrs. Tom Miller, Margaret Drake and Elizabeth Drake, all of Austin; three sisters and a brother, Mrs. Truman Morris, Mrs. James P. Hart and Mrs. R. M. Thomson, Jr., and Chester M. Drake, all of Austin; and eight grandchildren; now, therefore be it

Resolved, That the Senate of Texas of the 60th Legislature, First Called Session, extend its sympathy to the family of William Sherman Drake, Jr., and that the Secretary of the Senate is directed to prepare copies of this Resolution for presentation to his family; and be it further

Resolved, That when the Senate adjourns this day, it do so in memory of Mr. Drake and that a page in the Senate Journal be set aside for the recording of this Resolution.

HERRING

Signed—Lieutenant Governor Preston Smith; Aikin, Bates, Bernal, Berry, Blanchard, Brooks, Christie, Cole, Connally, Creighton, Grover, Hall, Hardeman, Harrington, Harris, Hazlewood, Hightower, Jordan, Kennard, Mauzy, Moore, Patman, Ratliff, Reagan, Schwartz, Strong, Wade, Watson, Wilson, Word.

The resolution was read.

On motion of Senator Aikin and by unanimous consent the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

The resolution was then unanimously adopted by a rising vote of the Senate.